Supreme Court, U. S.
FILED
DEC 24 1975
MICHAEL RODAK, JR., CLERK

APPENDIX

Supreme Court of the United States

OCTOBER TERM, 1975

NO. 75-260

L. N. McDONALD and RAYMOND L. LAIRD,
Petitioners,

—v.—

SANTA FE TRANSPORTATION COMPANY and TEAMSTERS FREIGHT, TANK LINE and AUTOMOBILE INDUSTRY EMPLOYEES, LOCAL UNION NO. 988

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petition For Certiorari Filed August 18, 1975
Certiorari Granted November 3, 1975

Alpha Law Brief Co., One Main Plaza, No. 1 Main St., Houston, Texas 77002

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CLERK'S DOCKET ENTRIES

CLOSED 5-2-74
JS 6 made pt

71-H-891

CIVIL DOCKET

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
C. Form No. 106A Rev. Houston Division

Jury demand date:

CASE O. BUE, JR

TITLE OF CASE	ATTORNEYS
L. N. McDONALD & RAYMOND LAIRD VS THE SANTA FE TRAIL TRANSPORTATION CO. AND INTERNATIONAL BROTHERHOOD OF TEAMSTERS LOCAL NO. 988	For plaintiff: ~~ISAAC E. HENDERSON~~ ~~711 Main Building~~ ~~Houston, Texas 77002~~ ~~2619 Blodgett~~ ~~521-9556~~ James Bullock 4719 Dowling Houston, Texas 77004 529-4701 For defendant: Sante Fe Trail Trans.- McLeod,Alexander,Powel & Apffel (Robert W. Alexander) P.O.Box 629 Galveston, Texas 77550 International Union No. 988- James P. Wolf DIXIE, WOLF & HALL 609 Fannin St. Bldg., #401 Houston, Texas 77002 223-4444

STATISTICAL RECORD	COSTS		DATE	NAME OR RECEIPT NO.	REC.	DISB.
. 6 mailed	Clerk		3/16/71	I E H	15 00	
			3/20/71	Cash		15 00
. 6 mailed	Marshal		5/24/74	J. Bullock Not. of Appeal	$5.00	
			5-3-74	C.O. 1-35		5 00
is of Action: Civil Rights, Junctive Relief, Preliminary Permanent Injunction	Docket fee					
	Witness fees					
tion arose at:	Depositions					

CA-H-891

CIVIL D. 1

DATE	PROCEEDINGS	Date Or Judgment
9/16/71	Original Complaint filed in Duplicate	1.
9/16/71	Summons issued on Santa Fe Transportation Company	
9/15/71	Summons on Santa Fe Ret. & filed. Ex. 9/9/71	2.
9-30-71	Defendant the Santa Fe Trail Transportation Company's motion to dismiss filed in duplicate (M /D 10-11-71)	3 11
9-30-71	Defendant the Santa Fe Trail Transportation Company's brief in support of its motion to dismiss filed in duplicate	4 14
10/18/71	Plaintiff's Reply to Defendant's Motion to Dismiss, filed.	5.15
11/15/71	Summons issued on International Brotherhood of Teamsters Local, No. 988	
12/6/71	Summons returned, executed on 11-17-71 on International Brotherhood of Teamsters Local No. 988, filed.	6.
12-7-71	ANSWER of Local Union No. 988, filed.	7 7
3/7/72	Plaintiff's Motion for Leave to File Amended Complaint, filed.	8.2
3/7/72	Plaintiffs' First Amended Complaint filed in Duplicate.	9.3
4/11/72	Answers of the Santa Fe Trail Transportation Co. to Plaintiffs' Interrogatories, filed.	10.3
4/24/72	Plaintiff's Interrogatories to Deft. Santa Fe Trail Transportation Co., filed.	11.4
6-10-73	Motion (Issac E. Henderson) to withdraw filed	12 4
7-11-73	(COB) PRE-TRIAL held.	
7-11-73	(COB) "The motion of Issac E. Henderson to withdraw as one of the counsel of record representing plaintiffs is GRANTED. . ."	4-A
7/19/73	Plaintiff's Second AMENDED COMPLAINT, filed.	13.4
7/25/73	Deft. Teamsters Local Union No. 988's Combined Notice of and MOTION to Dismiss, M/D 8/13/73.	14.5
7/25/73	Deft. Teamsters Local Union No. 988's BRIEF in Support of its Motion to Dismiss, filed.	15.6
7/25/73	Deft. Local Union No. 988's FIRST AMENDED ANSWER, filed.	16.4
1-28-73	ORIGINAL ANSWER of Deft. The Santa Fe Trail Transportation Co., filed.	17 7
1-28-73	Deft. The Santa Fe Trail Transportation Co.'s MOTION TO DISMISS, filed. M/D: 12-24-73 by Clerk	18 7
1-28-73	Deft. The Santa Fe Trail Transportation Co.'s BRIEF in Support of Its Motion to Dismiss, filed.	1981
2- 2-73	Amended Certificate of Service to Deft.'s The Santa Fe Trail Transportation Co.'s Motion to Dismiss, Brief in Support of Its Motion to Dismiss and Original Answer, filed.	20 8
2- 7-73	(COB) MEMORANDUM & ORDER, signed & filed. Pltf. directed to submit opposition to deft. Teamsters' Motion to Dismiss as well as Deft. Santa Fe's Motion to Dismiss no later than 12-24-73, or case will be dismissed for want of prosecution. (parties ntfd by c/c,rlo)	21
2-12-73	Deft. Santa Fe Trail Transportation Co.'s Supplemental BRIEF in Support of Its Motion to Dismiss, filed.	22
2-26-73	Pltf.'s Motion and MEMORANDUM in Opposition to Deft.'s Santa Fe Trail Transportation Co.'s Motion to Dismiss and Brief in Support, filed.	184 23

CA 71-H-891 Carl O. Bue, Jr.

Page #3

D. C. 1106 Rev. Civil Docket Continuation

DATE	PROCEEDINGS	Date Judge
1- 4-74	(COB) MEMORANDUM AND ORDER, signed & filed, Defts. Teamsters Local Union No. 988 and Santa Fe Trail Transportation Co.'s MOTIONS to Dismiss DENIED. Parties ntfd. by c/c. pt	10 24
1- 4-74	Deft. Santa Fe Trail Trans. MOTION FOR CONTINUANCE, filed.	25
1- 7-74	(COB) ORDER granting Motion of Santa Fe Trail Trsp. Co. for Continuance and re-setting case for trial at 10:00 am. May 3, 1974, signed & filed. (parties notified by c/c,rlo	26 111
4-22-74	Deft. Santa Fe Trail Transportation Co.'s SECOND MOTION TO DISMISS, filed. M/D: 4-29-74	27 114
4-22-74	Deft. Santa Fe Trail Transportation Co.'s SECOND SUPPLEMENTAL BRIEF in Support of Its Motion to Dismiss, filed.	28 117
5- 2-74	(COB) MEMORANDUM AND OPINION, signed & filed. Deft. Santa Fe Trail Transportation Co.'s Motion to Dismiss for lack of jurisdiction GRANTED; Court concludes action may not be maintained as a class action; action dismissed as to Deft. International Brotherhood of Teamsters Local No. 988 for want of jurisdiction; Court dismissed action w/prej. Parties ntfd. pt	29 12
5- 2-74	(COB) FINAL JUDGMENT, signed & filed, cause dismissed w/prej. Parties ntfd. by copy. pt	30 124
5- 9-74	DEPOSITIONS of the following, filed:	31
	Charles Adrian Jackson	32
	L. N. McDonald	33
	Donald Howard Stratton	34
	Fred Osburn, Jr.	35
	Raymond Laird	
5-22-74	Deft. Motion to Correct and Clarify Memorandum and Opinion accompanying Final Judgment herein of 5-2-74, filed.	36 12
5-24-74	Plffs' Notice of Appeal, filed.	37 127
6-13-74	(COB) MODIFIED MEMORANDUM & OPINION, filed. No proper basis for Title VII relief found and action against Deft. IBT # 988 dismissed for want of jurisdiction; further consideration as to deft. Santa Fe Trail Trsp. Co.-no claim upon which Title VII relief can be granted. This case dismissed with prejudice. Parties notified by copy.	38 133
6-13-74	(COB) FINAL JUDGMENT, filed. Case dismissed w/prejudice in line with its Memorandum & Opinion of even date. Parties notified by copy. rlo	39 134

IN THE

United States District Court

For The Southern District of Texas
Houston Division

CIVIL ACTION NO. _____

L. N. McDONALD and RAYMOND LAIRD
Plaintiffs

vs.

THE SANTA FE TRAIL TRANSPORTATION CO.
and
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS LOCAL NO. 988
Defendants

COMPLAINT

Count 1

I.

Jurisdiction of this Court is invoked pursuant to 28 U.S.C. sec. 1343(4); 42 U.S.C. sec. 2000e-5 (f) and 28 U.S.C. secs. 2201 and 2202. This is a suit in equity authorized and instituted pursuant to Title VII of the Act of Congress known as "The Civil Rights Act of 1964," 42 U.S.C. secs. 2000e et seq. The jurisdiction of this Court is invoked to secure protection of and to redress deprivation of rights secured by (a) 42 U.S.C. secs. 2000e et seq., providing for injunctive and other relief against racial discrimination in employment and (b) 42 U.S.C. sec. 1981, providing for the equal rights of all persons in every state and territory within the jurisdiction

of the United States. Jurisdiction of this Court is also invoked pursuant to 29 U.S.C. secs. 151 et seq., based on violations of the duty of fair representation owed to plaintiffs and the class they represent.

II.

Plaintiffs brings this action on their own behalf and on behalf of other persons similarly situated pursuant to Rule 23 (b)(2) of the Federal Rules of Civil Procedure. The class which plaintiffs represents is composed of white persons who are employed or might be employed by the persons who are employed or might be employed by the SANTA FE TRAIL TRANSPORTATION CO. at its Transportation Terminal located in Houston, Texas and who are members or might become members of the Local 988, who have been and continue to be or might be adversely affected by the practices complained herein. There are common questions of law and fact affecting the rights of the members of this class who are, and continue to be limited, classified, and discriminated against in ways which deprive and tend to deprive them of equal employment opportunities and otherwise adversely affect their status as employees because of race. These persons are so numerous that joinder of all members is impracticable. A common relief is sought. The interests of said class are adequately represented by plaintiffs. Defendants have acted or refused to act on grounds generally applicable to the class.

III.

This is a proceeding for a declaratory judgment as to plaintiffs' rights and for a preliminary and permanent injunction, restraining defendants from maintaining a policy,

practice, custom or useage of (a) discriminating against plaintiffs and other white persons in this class because of race with respect to compensation, terms, conditions and privileges of employment and (b) limiting, segregating and classifying employees of defendant, SANTA FE TRAIL TRANSPORTATION CO. who are members of Local 988 in ways which deprive plaintiffs and other white persons in this class of equal employment opportunities and otherwise adversely affect their status as employees because of race.

IV.

The following policies, practices, customs and useages made unlawful by Title VII of the Civil Rights Act of 1964 have been instituted and/or maintained by the defendants.

(A) On or about October 2, 1970, the Plaintiffs, L. N. McDonald and Raymond Laird were discharged from employment by Defendant without cause and on information and belief. Plaintiffs alleges that they were discharged because of their race, caucasian.

(B) On or about September 26, 1970, Plaintiffs, L. N. McDonald and Raymond L. Laird along with one Negro employee, Charles Jackson were all charged jointly and severally with mis-appropriating company property, ten cases of six one gallon cans of anti-freeze, all of which were part of a shipment to twenty-five cases being shipped to Defendant's customers.

(C) On October 2, 1970 Defendant discharged Plaintiffs, L. N. McDonald and Raymond L. Laird while retaining the Negro employee, Charles Jackson in its employ, Plaintiffs alleges that Defendant imposed a more

severe disciplinary sanction against them because of their race, Caucasian than against their Negro counter part for his involvement.

V.

The plaintiff, L. N. McDonald is a white citizen of the United States and a resident of the City of Houston in the State of Texas. Plaintiff, L. N. McDonald has been employed by Defendant as a truck driver at its tranportation termial in Houston, Texas and is a member in good standing of Local 988 of the International Brotherhood of Teamsters.

The Plaintiff, Raymond L. Laird is a white citizen of the United States and is a resident of the city of Houston and the State of Texas. Plaintiff, Raymond L. Laird has been employed by Defendant as a dock foreman at its transportation terminal in Houston, Texas for about nine and one-half years and is a member in good standing of Local 988.

VI.

(A) Defendant, Santa Fe Trail Transportation Co. is a common carrier doing business in the State of Texas and the City of Houston. The Company operates and maintains Ground Transportation and is an employer within the meaning of 42 U.S.C. sec. 2000e-(b) in that the company is engaged in an industry affecting commerce and employ at least twenty-five persons.

(B) Defendant, International Brotherhood of Teamsters Local 988, is a labor organization within the meaning of 42 U.S.C. secs. 200-e (d) and (c) in that International Brotherhood of Teamsters Local No. 988 is en-

gaged in a industry affecting commerce and exists, in whole or in part, for the purpose of dealing with the Company concerning grievance, labor disputes, wages, rates of pay, hours, and other terms or conditions of employment of the employees of the Company at its plants and other facilities located in various cities and states throughout the United States, including employees of the Company's plants and other facilities in and around the City of Houston in the State of Texas. The International Brotherhood of Teamsters Local 988 has at least twenty-five members.

VII.

On April 7, 1971, Plaintiffs filed a timely and proper complaint before the Equal Employment Opportunity Commission (E.E.O.C.) alleging denial by Defendant of their rights under Title VII of the Civil Rights Act of 1964, 42 U.S.C., Section 2000e et seq. On July 15, 1971, the Commission notified plaintiffs under the provisions of Section 706(e) of Title VII of the Civil Rights Act of 1964, the plaintiffs had the right to bring a civil action in a United States District Court.

Neither the State of Texas nor the City of Houston has a law prohibiting the unlawful employment practices alleged herein.

Count II

VIII.

Plaintiffs does hereby incorporate and adopt by reference all of the allegations set fort in Paragraph I through VIII of Count I of this Complaint.

IX.

At all times material herein Local 988 and the International Brotherhood of Teamsters have been certified recognized representatives under the National Labor Relations Act of the plaintiffs and the class they represents.

X.

Defendants, International Brotherhood of Teamsters and Local 988 have violated and continue to violate their duty of fair representation imposed on them by the National Labor Relations Act in that they have acquiesced and/or joined in the unlawful and discriminatory practices complained of in Paragraph IV and they have failed to protect the White members of the Company from said discriminatory policies and practices. The Company has knowingly participated in or acquiesced in said violation of the duty of fair representation.

XI.

Plaintiffs and the class they represent have no plain, adequate or complete remedy at law to redress the wrongs alleged herein and this suit for a preliminary and permanent injunction is their only means of securing adequate relief. Plaintiffs and the class they represents are now suffering and will continue to suffer irreparable injury from the defendant's policies, practices, customs and usages as set forth herein.

WHEREFORE, Plaintiffs respectfully pray this Court to advance this case on the docket, order a speedy hearing at the earliest practicable date, cause this case to be in every way expedited and upon such hearing to:

1. Grant Plaintiffs and the class they represents a permanent injunction enjoining the defendant Santa Fe Trail Transportation Co. its agents, successors, employees, attorneys and those acting in concert with it at its direction from continuing to maintain discriminatory disciplinary policies that imposes more severe disciplinary sanctions against Plaintiffs because of their race, Caucasian than against their Negro counter-part, denying Plaintiffs rights to equal treatment as secured by Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e et seq.

2. Grant Plaintiffs a preliminary injunction ordering the Defendant, Santa Fe Trail Transportation Co. to reinstate L. N. McDonald and Raymond L. Laird with all back pay wages lost, monetary losses and seniority lost as a result of the discriminatory discharge.

3. Grant Plaintiffs and the class they represents a permanent injunction enjoining the defendant, International Brotherhood of Teamsters Local 988, its agents, successors, employees, attorneys and those acting in concert with it and at its direction from continuing or maintaining the policy, practice, custom and usage of denying, abridging, withholding, conditioning, limiting, or otherwise interfering with the rights of plaintiffs to be impartially and fairly represented on the basis of merit rather than race, and the right to equal representation as secured by Title VII of the Civil Rights Act of 1964, 42 U.S.C., Section 2000e et seq.

4. Grant Plaintiffs and the class they represent a permanent injunction enjoining the defendant International Brotherhood of Teamster Local 988 its agents, successors, employees, and those acting in concert with it from refusing to properly and diligently represent plaintiffs and the class they represent.

5. Order the Defendants to take that affirmative action necessary to correct the practices, policies, customs and useages which discriminates against Plaintiffs and members of the class plaintiffs represents because of their race, Caucasian.

6. Plaintiffs further prays that this Court will allow them cost herein, reasonable attorney's fees and grant such further additional or alternative relief as may appear to the court to be equitable and just.

Respectfully submitted,

JAMES BULLOCK
Attorney at Law
711 Main Building
Houston, Texas 77002
713-228-2241

Isaac E. Henderson
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Houston, Texas 77004
713-521-9556

Attorneys For Plaintiffs

(Jurat Omitted in Printing)

IN THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

(Title Omitted in Printing)

ORIGINAL ANSWER

COMES NOW Teamsters Freight and Tank Line Employees, Local Union No. 988, and files this Original Answer in response to the Complaint of L. N. McDonald and Raymond Laird, Plaintiffs herein, showing the Court as follows:

I.
FIRST DEFENSE

The Complaint fails to state a claim upon which relief can be granted as a class action because Plaintiffs will not fairly insure the adequate representation of the described said class, the rights sought to be enforced by this Complaint are not typical of the claims of the said class and the many questions of law and/or fact asserted in the Complaint as affecting the several rights of employees in the described class are not common.

II.
SECOND DEFENSE

Except for conclusionary allegations claiming discriminatory policies, practices, customs and usages which discriminate against members in the described class, the Complaint renders down to an allegation that the two Plaintiffs were discharged on or about October 2, 1970

by Defendant Company on charges that Plaintiffs had misappropriated Company property. The Complaint concludes that Plaineiffs were discriminated against because they were white and discharged whereas a Negro employee was also charged with misappropriation of Company property was not discharged.

The Complaint identifies Plaintiff, Raymond L. Laird, as a dock foreman at the Company's Houston terminal. As such, Plaintiff Laird differs from Plaintiff L. N. McDonald in that Foreman Laird is not within the contractually established bargaining unit. Defendant Union is prohibited from requiring the Company to recognize it as representing foremen or supervisory personnel by the Labor Management Relations Act. 29 U.S.C. 157, et seq. This factor not only shows that a class action does not exist here but explains why a grievance concerning the discharge of Plaintiff McDonald was processed but one for Laird was not. A copy of this grievance marked Exhibit A1 and A2 is attached to this answer. Plaintiff McDonald' grievance complaining that his discharge was forbidden by the contract because it was not for just cause was taken to final and binding arbitration by the Union in accordance with the contract. The award denying Plaintiff's grievance was final and binding on all parties.

The collective bargaining contract in effect between Defendant Union and Defendant Employer protects employees against discharge or suspension except for just cause and also contains a clause against non-discrimination. It reads as follows:

> "The Employer and the Union agree not to discriminate against any individual with respect to his hiring, compensation, terms or conditions of employment be-

cause of such individual's race, color, religion, sex or national origin, nor will they limit, segregate or classify employees in any way to deprive any individual employee of employment opportunities because of his race, color, religion, sex or national origin."

Plaintiff L. N. McDonald elected to pursue his contractual remedies for his discharge and any alleged discrimination on or about October 8, 1970. The main issue of whether Plaintiff was discriminated against unjustly by discharge has been judicially and finally decided by an arbitration tribunal of competent and proper jurisdiction in accordance with the collective bargaining contract. After full hearing his grievance was denied on or about October 21, 1970. The Court lacks jurisdiction over the Plaintiff's claim for his discharge because he elected to have it determined through use of the grievance procedure in the collective bargaining agreement and is now estopped from asserting the same claim in a new form in this action.

III.
THIRD DEFENSE

Plaintiff failed to utilize or exhaust his internal Union remedies or his remedies under the Labor Management Relations Act before bringing this action.

Without waiver of the foregoing special defenses and subject thereto, Defendants respond to Plaintiff's pleadings as follows:

1. Defendant admits the alleged cause of action arises under Title VII of the Civil Rights Act of 1964 as alleged in Paragraph I of the complaint.

Defendant denies that this is a proper procedure for a declaratory judgment.

2. Defendant denies that this is a class action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure. Plaintiffs allege that the class to be composed of white persons who are employed or might be employed at Defendant Company and who are members or who might become members of Local 988. As a matter of fact, one Plaintiff is a member of supervision and the other Plaintiff is a rank and file employee member of the appropriate bargaining unit. Congress has eliminated supervisory employees from the definition of employee in the Labor Management Relations Act. In the same Act unions are prohibited from requiring the employer to recognize them as representing supervisory employees or to bargain concerning their conditions of work, hire or tenure. Defendants deny that there are common questions of law and fact affecting the rights of the members of this class. Defendant further denies that it has caused members of the described class or any class to be limited or classified, and discriminated against in ways which deprived and intend to deprive them of equal employment opportunities and otherwise affect their status as employees because of race.

3. Defendant denies that it has maintained a policy, practice, custom or usage of discriminating against white persons because of race with respect to compensation, terms, conditions and privileges of employment or that they have limited, segregated and classified employees of Defendant by race or in ways which deprive white persons of equal employment opportunities and adversely affect their status as employees.

4. Defendant Local Union No. 988 denies the allegations of paragraph IV of the Complaint. Defendant denies that it has instituted or maintained any policies, practices, customs and usages made unlawful by Title VII of the Civil Rights Act of 1964. The alleged policies, practices, and so on described in paragraph IV of the Complaint all relate to actions of Defendant Employer and not of Defendant Union.

5. The allegations of paragraph V of the Complaint are admitted.

6. Defendant is without knowledge as to the exact operations of Defendant Santa Fe Trail Transportation Company. Defendant Union admits the allegations of paragraph VI-B.

7. Defendant Union admits that it has been the recognized bargaining agent of the appropriate unit for bargaining described in its collective bargaining contract. It admits that Plaintiff L. N. McDonald was a member of the bargaining unit but denies that Plaintiff Raymond Laird was a member of the bargaining unit.

8. Defendant denies that it has violated its duty of fair representation required by the Labor Management Relations Act, but to the contrary, Defendant alleges that it has treated all employees in the bargaining unit on a non-discriminatory basis and that it represented Plaintiff L. N. McDonald on his grievance fully, fairly and vigorously.

Defendant further denies that it has acquiesced or joined in any unlawful and discriminatory practices complained of in the Complaint or that it has failed to represent properly or to protect the white employees of the bargaining unit of Defendant Company from any discriminatory

policies or practices. Defendant denies that it has engaged in a violation of the duty of fair representation or that the Company has knowingly colluded with the Union or participated in such alleged violations of the duty of fair representation.

9. Defendant specially denies that it has instituted, maintained and/or acquiesced in practices, policies, customs and usages which have denied Plaintiffs or other employees equal employment and opportunities because of their race or color, or that it has limited, segregated or classified persons because of their race or color. Defendant has not acquiesced in any policy, practice, custom or usage which would circumvent its collective bargaining contract which strictly requires that all persons in the bargaining unit be treated equally and without discrimination. Defendant denies that it has conspired or acted in collusion with Defendant Employer to deprive these Plaintiffs or any employees of any right. Defendant also denies that it breached its duty of fair representation or acted arbitrarily, capriciously in bad faith or for any invidious motivation towards these Plaintiffs. To the contrary, in regard to Plaintiff L. N. McDonald who filed a grievance, the Union represented him fully, fairly and vigorously in his grievance to a final and binding award. The final award denying the grievance denied Plaintiff's claim that his discharge was unjust.

WHEREFORE, premises considered, Defendant Union prays that upon the final trial and hearing hereof Plaintiffs take nothing and that Defendant recover all costs of court incurred, and have such other and further relief, both

general and special, legal and equitable, to which it may show itself justly entitled.

DIXIE, WOLF & HALL

By: _____

James P. Wolf
Suite 401, 609 Fannin St. Bldg.
Houston, Texas 77002
223-4444
ATTORNEYS FOR
DEFENDANT UNION,
TEAMSTERS LOCAL NO. 988

(Certificate of Service Omitted in Printing)

Exhibit A1

TEAMSTER FREIGHT & TANK LINE EMPLOYEES
LOCAL UNION NO. 988
HOUSTON, TEXAS

GRIEVANCE REPORT

Assigned To: Local 988 Date: Oct. 8, 1970

Company: Lone Star

Employer's Address: 301 Bryan St. Employer's Telephone No.: WA. 3-5453

Did you contact Steward Yes Steward's Signature A(Z

Explain as fully as possible nature of grievance. If necessary use reverse side:

Date grievance occurred Oct. 2, 1970

Time grievance occurred On Oct 2nd I, J. W. McDonald was unjustly discharged from Lone Star Trail Trans. Co. for dishonesty & theft of freight.

These Charges are wrong and are unjust, because I did not steal any thing or I was not dishonest in any way. I was accused of stealing 10 cases of Antifreeze off trailer 20438 & it I said was to buy Lunch with that Mr. Alley at L. M. S. who is the shipping clerk, said (our)

TO THE JOINT SOUTHWEST AREA GRIEVANCE COMMITTEE:

This is to advise you that I hereby give authority to any Union Representative of Local Union No. 988 to represent me and ratify and confirm any and all things such Union representative may do in my behalf on this matter in the event that I do not make myself present at the Grievance Committee hearing for the above mentioned grievance.

Employee Signature J. W. McDonald

Steward's Report I feel that this man is victim unjustly accused, And that the Charges are wrong

Give full details as to disposition: _____

DATE COMPLETED 10/18/70 Business Agent _____

Exhibit A2

this was some Anti Trust crap or
Civil 20438 and we could also
subpoena and prosecute do with
it, and Pls Counsel told me what to
do with this Antitrust.

IN THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

(Title Omitted in Printing)

PLAINTIFF'S FIRST AMENDED COMPLAINT

I.

Comes now the Plaintiff, and as of course in accordance with Rule 15 (a), Federal Rules of Civil Procedure, amends the complaint in this action so that the same will read as follows:

Jurisdiction of this Court is invoked pursuant to 28 U.S.C. sec. 1343 (4); 42 U.S.C. sec. 2000e-5 (f) and 28 U.S.C. secs. 2201 and 2202. This is a suit in equity authorized and instituted pursuant to Title VII of the Act of Congress known as "The Civil Rights Act of 1964," 42 U.S.C. secs. 2000e et seq. The jurisdiction of this Court is invoked to secure protection of and to redress deprivation of rights secured by (a) 42 U.S.C. secs. 2000e et seq., providing for injunctive and other relief against racial discrimination in employment and (b) 42 U.S.C. sec. 1981, providing for the equal rights of all persons in every state and territory within the jurisdiction of the United States. Jurisdiction of this Court is also invoked pursuant to 29 U.S.C. secs. 151 et seq., based on violations of fair representation owed to plaintiffs and the class they represent.

II.

Plaintiffs bring this action on their own behalf and on behalf of other persons similarly situated pursuant to

Rule 23 (b) (2) of the Federal Rules of Civil Procedure. The class which plaintiffs represents is composed of white persons who are employed or might be employed by the SANTA FE TRAIL TRANSPORTATION CO. at its Transportation Terminal located in Houston, Texas and who are members or might become members of the Local 988, who have been and continue to be or might be adversely affected by the practices complained herein. There are common questions of law and fact affecting the rights of the members of this class who are, and continue to be limited, classified, and discriminated against in ways which deprive and tend to deprive them of equal employment opportunities and otherwise adversely affect their status as employees because of race. These persons are so numerous that joinder of all members is impracticable. A common relief is sought. Defendants have acted or refused to act on grounds generally applicable to the class.

III.

This is a proceeding for a declaratory judgment as to plaintiffs' rights and for a preliminary and permanent injunction, restraining defendants from maintaining a policy, practice, custom or usage of (a) discriminating against plaintiffs and other white persons in this class because of race with respect to compensation, terms, conditions and privileges of employment and (b) limiting, segregating and classifying employees of defendant, SANTA FE TRAIL TRANSPORTATION CO. who are members of Local 988 in ways which deprive plaintiffs and other white persons in this class of equal employment opportunities and otherwise adversely affect their status as employees because of race.

IV.

The plaintiff, L. N. McDonald is a white citizen of the United States and a resident of the City of Houston in the State of Texas. Plaintiff, L. N. McDonald has been employed by Defendant as a truck driver at its transportation terminal in Houston, Texas and is a member in good standing of Local 988 of the International Brotherhood of Teamsters.

The Plaintiff, Raymond L. Laird is a white citizen of the United States and is a resident of the city of Houston and the State of Texas. Plaintiff, Raymond L. Laird has been employed by Defendant as a dock foreman at its transportation terminal in Houston, Texas for about nine and one-half years and is a member in good standing of Local 988.

V.

(A) Defendant, Santa Fe Trail Transportation Co. is a common carrier doing business in the State of Texas and the City of Houston. The Company operates and maintains Ground Transportation is an employer within the meaning of 42 U.S.C. sec. 2000e-(b) in that the company is engaged in an industry affecting commerce and employ at least twenty-five persons.

(B) Defendant, International Brotherhood of Teamsters Local 988, is a labor organization within the meaning of 42 U.S.C. secs. 2000-e (d) and (c) in that International Brotherhood of Teamsters Local No. 988 is engaged in a industry affecting commerce and exists, in whole or in part, for the purpose of dealing with the Company concerning grievance, labor disputes, wages, rates of pay, hours, and other terms or conditions of employment of

the employees of the Company at its plants and other facilities in and around the City of Houston in the State of Texas. The International Brotherhood of Teamsters Local 988 has at least twenty-five members.

VI.

The following policies, practices, customs and usages made unlawful by Title VII of the Civil Rights Act of 1964 and 42 U.S.C. sec. 1981, providing for the equal rights of all persons in every state and territory have been instituted and/or maintained by the defendants, as well as violations of the duty of fair representation owed to plaintiffs under 29 U.S.C. secs. 151 et seq.

(A) On or about October 2, 1970, the plaintiffs, L. N. McDonald and Raymond Laird were discharged from employment by Defendant, Santa Fe Trail Transportation Compan , without cause and on information and belief, Plaintiffs alleges that they were discharged because of their race, caucasian.

(B) On or about September 26, 1970, Plaintiffs, L. N. McDonald and Raymond L. Laird along with one negro employee, Charles Jackson were all charged jointly and severally with mis-appropriating company property, to-wit; ten cases of six one gallon cans of anti-freeze, all of which were part of a shipment of twenty-five cases being shipped to Defendant's customers.

(C) On October 2, 1971, Defendant discharged Plaintiffs, L. N. McDonald and Raymond L. Laird while retaining the negro employee, Charles Jackson in its employ, Plaintiffs alleges that Defendant imposed a more severe disciplinary sanction against them because of their race, Caucasian than against their negro counterpart.

(D) On or about October 2, 1970, Plaintiffs filed a grievance with the Local Union 988 pursuant to the Article 44 of its collective bargaining agreement in accordance with the Procedure outlined for settling such dispute.

(E) On or about April 3, 1971, Plaintiffs were notified in writing by Local Union 988 that it would not pursue the claim or grievance any further and would not seek arbitration.

(F) On or about April 9, 1971, Plaintiffs filed a complaint with the E.E.O.C. which was approximately six months and three days from the day the grievance was first filed with the Union. Plaintiffs alleges that the delay in filing with the E.E.O.C. was consumed in grievance procedures under an existing collective bargaining agreement and that the 90-day statute was tolled during such period.

VII.

On April 7, 1971, Plaintiffs filed a timely and proper complaint before the Equal Employment Opportunity Commission (E.E.O.C.) alleging denial by Defendant of their rights under Title VII of the Civil Rights Act of 1964, 42 U.S.C., Section 2000e et seq. On July 15, 1971, the Commission notified plaintiffs under the provisions of Section 906 (e) of Title VII of the Civil Rights Act of 1964, the plaintiffs had the right to bring a civil action in a United States District Court.

Neither the State of Texas nor the City of Houston has a law prohibiting the unlawful employment practices alleged herein.

VIII.

Plaintiffs does hereby incorporate and adopt by reference all of the allegations set forth in Paragraph I through VII of this Complaint.

IX.

At all times material herein Local 988 and the International Brotherhood of Teamsters have been certified recognized representatives under the National Labor Relations Act of the plaintiffs and the class they represent.

X.

Defendants, International Brotherhood of Teamsters and Local 988 have violated and continue to violate their duty of fair representation imposed on them by the National Labor Relations Act in that they have acquiesced and/or joined in the unlawful and discriminatory practices complained of in Paragraph VI and they have failed to protect the White members of the Company from said discriminatory policies and practices. The Company has knowingly participated in or acquiesced in said violation of the duty of fair representation.

XI.

Plaintiffs and the class they represent have no plain, adequate or complete remedy at law to redress the wrongs alleged herein and this suit for a preliminary and permanent injunction is their only means of securing adequate relief. Plaintiffs and the class they represent are now suffering and will continue to suffer irreparable injury from the defendant's policies, practices, customs and usages as set herein.

WHEREFORE, Plaintiffs respectfully pray this Court to advance this case on the docket, order a speedy hearing at the earliest practicable date, cause this case to be in every way expedited and upon such hearing to:

1. Grant Plaintiffs and the class they represent a permanent injunction enjoining the defendant Santa Fe Trail Transportation Co. its agents, successors, employees, attorneys and those acting in concert with it at its direction from continuing to maintain discriminatory disciplinary policies that imposes more severe disciplinary sanctions against Plaintiffs because of their race, Caucasian than against their Negro counter-part, denying Plaintiffs rights to equal treatment as secured by Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e et seq.

2. Grant Plaintiffs a preliminary injunction ordering the Defendant, Santa Fe Trail Transportation Co. to reinstate L. N. McDonald and Raymond L. Laird with all back pay wages lost, monetary losses and seniority lost as a result of the discriminatory discharge.

3. Grant Plaintiffs and the class they represent a permanent injunction enjoining the defendant, International Brotherhood of Teamsters Local 988, its agents, successors, employees, attorneys and those acting in concert with it and at its direction from continuing or maintaining the policy, practice, custom and usage of denying, abridging, withholding, conditioning, limiting, or otherwise interfering with the rights of plaintiffs to be impartially and fairly represented on the basis of merit rather than race, and the right to equal representation as secured by Title VII of the Civil Rights Act of 1964, 42 U.S.C., Section 2000e et seq.

4. Grant Plaintiffs and the class they represent a permanent injunction enjoining the defendant International Brotherhood of Teamster Local 988 its agents, successors, employees, and those acting in concert with it from refusing to properly and diligently represent plaintiffs and the class they represent.

5. Order the Defendants to take that affirmative action necessary to correct the practices, policies, customs and usages which discriminates against Plaintiffs and members of the class plaintiffs represents because of their race, Caucasian.

6. Plaintiff further prays that this Court will allow them cost herein, reasonable attorney's fees and grant such further additional or alternative relief as may appear to the court to be equitable and just.

Respectfully submitted,

JAMES BULLOCK
Attorney at Law
4719 Dowling Street
Houston, Texas 77004
713-529-4701

Isaac E. Henderson
2619 Blodgett Street
Houston, Texas
713-521-9556
ATTORNEYS FOR
PLAINTIFFS

By:_____
JAMES BULLOCK

IN THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

(Title Omitted In Printing)

To The Santa Fe Trail Transportation Company
Defendant:

The Plaintiff requests that the following interrogatories be answered under oath by any of your officers competent to testify in your behalf who know the facts about which inquiry is made and that the answers be served on Plaintiff within fifteen (15) days from the time these interrogatories are served on you:

Interrogatory No. I: The specific reason for which the following individuals (Plaintiffs) were discharged; (a) L. N. McDonald and, (b) Raymond Laird.

Interrogatory No. II: A copy of Company's written policy on disciplinary action.

Interrogatory No. III: What means is utilized to make this policy known to Company employees?

Interrogatory No. IV: A list of all company employees discharged between January 1, 1970 and December 31, 1970, to include:

a. the name of the individual.

b. the date of discharge;

c. the date of the individual's initial employment;

d. the position or positions held by the individual prior to discharge;

e. the address and telephone number of the individual discharged;

f. the specific reason for the discharge;

g. the race or national origin of the individual discharged;

h. what are the wage scales of all positions;

i. list of all employees hired to replace the individuals discharged to include, starting wages, increases, present wages, and positions;

j. application for employment on all individuals discharged;

k. evaluation reports on all individuals discharged;

l. letter of Merit or Commendation on all individuals discharged;

m. a copy of the Company's Handbook;

Interrogatory No. V: Any and all personnel records, usually maintained by the Company, regarding the following individuals (Plaintiffs); (a) L. N. McDonald, and (b) Raymond Laird. Including, but not limited to, their payroll records, any evaluation reports made on them, and any written memoranda relating to their proficiency.

Interrogatory No. VI: Copy of the Company's collective bargaining agreements with amendments, additions, etc.

Interrogatory No. VII: Any and all records relating to past disciplinary action against Company employee, Charles Jackson.

Interrogatory No. VIII: A copy of any grievances filed by Plaintiffs L. N. McDonald and Raymond Laird.

Interrogatory No. IX: A copy of the arbitration dispute and the arbitration award.

Interrogatory No. V: What officer of your Company initiated charges of mis-appropriating Company property against the Plaintiffs, L. N. McDonald and Raymond Laird?

Interrogatory No. XI: Why was Company employee Charles Jackson retained in the Company's employ after being charged with mis-appropriating Company property?

Interrogatory No. XII: Were Plaintiffs discharged for reasons other than race, if so, what were those reasons and what written documentary support does the Company have for those reasons?

Dated: February 22, 1972

/s/ JAMES BULLOCK

James Bullock
Attorney for Plaintiffs
4719 Dowling Street
Houston, Texas 77004
(713) 529-4701

IN THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

(Title Omitted in Printing)

ANSWERS OF THE SANTA FE TRAIL TRANSPORTATION COMPANY TO PLAINTIFF'S INTERROGATORIES

D. H. STRATTON, Houston Terminal Manager of The Santa Fe Trail Transportation Company, having been duly sworn, makes the following Answers to Interrogatories propounded to The Santa Fe Trail Transportation Company by L. N. McDonald and Raymond Laird, plaintiffs in the above entitled cause, such Answers to Interrogatories bearing the same number as Plaintiffs' Interrogatories.

I.(a) L. N. McDonald was discharged because of his dishonesty in the theft of company freight off of company equipment on company property and for violation of company rules.

(b) Raymond Lee Laird was discharged for failure to properly perform his duties, exercising poor judgment as General Dock Foreman and for violation of company rules.

II. This defendant objects to the form of the question, in that it is no question at all, but appears to be a demand for production of a document, which is neither authorized nor required by Rule 33; however, disciplinary action is that outlined in Article 46, Section 1 of Defendant's Contract with the International Brotherhood of Teamsters.

III. Copies of said Contract are delivered to each of defendant's employees by the Union.

IV.(a) L. N. McDonald and Raymond Lee Laird were the only employees employed at defendant's Houston Terminal by this defendant, who were discharged between January 1 and December 31, 1970.

(b) Date of their discharges was October 2, 1970.

(c) L. N. McDonald was initially employed on June 27, 1962, and Raymond Lee Laird was initially employed on July 27, 1961.

(d) McDonald's position, prior to discharge, was that of driver, and Laird's position or positions, prior to discharge, were that of driver, General Dock Foreman and Transportation Supervisor.

(e) McDonald, according to this defendant's latest information, resides at 301 Bryan Street, Houston, Texas, with Telephone Number 923-5453; Laird, according to this defendant's information, resides at 702 Janisch, Houston, Texas, with Telephone Number 697-7810.

(f) Same Answer as the Answer to Interrogatory No. I.

(g) White.

(h) McDonald, at time of termination, was employed at a wage scale of $4.45 per hour; Laird was employed, at the time of termination, at the rate of $800.00 per month.

(i) Laird was replaced by Roger C. Lowery, at a starting salary of $895.00 per month; however, Mr. Lowery terminated his employment on August 18, 1971. No particular replacement was hired to fill the vacancy created by McDonald's termination.

(j) This defendant objects to the form of questions, in that they are

(k) not questions at all, but appear to be a demand for production of

(l) documents, which is neither authorized nor required by Rule 33

(m) (This Answer applies to (j), (k), (l) and (m).

V. This defendant objects to the form of questions, in that they are

VI. not questions at all, but appear to be a demand for production of

VII. documents, which is neither authorized nor required by Rule 33.

VIII. (This Answer applies to V, VI, VII, VIII and IX).

IX.

X. No particular officer of the company initiated charges of misappropriating company property against the plaintiffs, L. N. McDonald and Raymond Laird, since the facts surrounding the events leading up to their termination were the result of a rather general investigation. D. H. Stratton, Terminal Manager at Houston, however, terminated their employ.

XI. Charles Jackson was not charged with mis-appropriating company property.

XII. Plaintiffs were discharged for reasons other than race. The reasons are outlined in Answer to Interrogatory No. 1, and the company has written Statements of the plaintiffs in support thereof.

(Jurat and Certificate of Service Omitted in Printing)

IN THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

(Title Omitted in Printing)

PLAINTIFF'S SECOND AMENDED COMPLAINT

I.

Comes now the Plaintiff, and as of course in accordance with Rule 15(a), Federal Rules of Civil Procedure, amends the complaint in this action so that the same will read as follows:

Jurisdiction of this Court is invoked pursuant to 28 U.S.C. sec. 1343 (4); 42 U.S.C., sec. 2000 e-5 (f) and 28 U.S.C. secs. 2201 and 2202. This is a suit in equity, authorized and instituted pursuant to Title VII of the Act of Congress known as "The Civil Rights Act of 1964," 42 U.S.C. secs. 2000e et seq. The jurisdiction of this Court is invoked to secure protection of and to redress deprivation of rights secured by (a) 42 U.S.C. secs. 2000e et seq., providing for injunctive and other relief against racial discrimination in employment and (b) 42 U.S.C. sec. 1981, providing for the equal rights of all persons in every state and territory within the jurisdiction of the United States. Jurisdiction of this Court is also invoked pursuant to 29 U.S.C. secs. 151 et seq., based on violations of fair representation owed to plaintiffs and the class they represents.

II.

Plaintiffs brings this action on their own behalf and on behalf of other persons similarly situated pursuant to Rule 23

(b)(2) of the Federal Rules of Civil Procedure. The class which plaintiffs represents is composed of white persons who are employed or might be employed by the SANTA FE TRAIL TRANSPORTATION CO. at its Transportation Terminal located in Houston, Texas and who are members or might become members of the Local 988, who have been and continue to be or might be adversely affected by the practices complained herein. There are common questions of law and fact affecting the rights of the members of this class who are, and continue to be limited, classified, and discriminated against in ways which deprive and tend to deprive them of equal employment opportunities and otherwise adversely affect their status as employees because of race conditions of employment. These persons are so numerous that joinder of all members is impracticable. A common relief is sought. Defendants have acted or refused to act on grounds generally applicable to the class.

III.

This is a proceeding for a declaratory judgment as to plaintiffs rights and for a preliminary and permanent injunction, restraining defendants from maintaining a policy, practice, custom or usage of (a) discriminating against plaintiffs and other white persons in this class because of race with respect to compensation, terms, conditions and privileges of employment and (b) limiting, segregating and classifying employees of defendant, SANTA FE TRAIL TRANSPORTATION CO. who are members of Local 988 in ways which deprive plaintiffs and other white persons in this class of equal employment opportunities and otherwise adversely affect their status as employees because of race.

IV.

The plaintiff, L. N. McDonald is a white citizen of the United States and a resident of the City of Houston in the State of Texas. Plaintiff, L. N. McDonald has been employed by Defendant as a truck driver at its transportation terminal in Houston, Texas and is a member in good standing of Local 988 of the International Brotherhood of Teamsters.

The Plaintiff, Raymond L. Laird is a white citizen of the United States and is a resident of the City of Houston and the State of Texas. Plaintiff, Raymond L. Laird has been employed by Defendant as a dock foreman at its transportation terminal in Houston, Texas for about nine and one-half years and is a member in good standing of local 988.

V.

(A) Defendant, Santa Fe Trail Transportation Co. is a common carrier doing business in the State of Texas and the City of Houston. The Company operates and maintains Ground Transportation and is an employer within the meaning of 42 U.S.C. sec. 2000e (b) in that the company is engaged in an industry affecting commerce and employ at least twenty-five persons.

(B) Defendant, International Brotherhood of Teamsters Local 988, is a labor organization within the meaning of 42 U.S.C. secs. 2000e (d) and (c) in that International Brotherhood of Teamsters Local No. 988 is engaged in a industry affecting commerce and exists, in whole or in part, for the purpose of dealing with the Company concerning grievance, labor disputes, wages, rates of pay, hours, and other terms or conditions of employment of of the employees of the Company at its plants and other

facilities in and around the City of Houston in the State of Texas. The International Brotherhood of Teamsters Local 988 has at least twenty-five members.

VI.

The following policies, practices, customs and usages made unlawful by Title VII of the Civil Rights Act of 1964 and 42 U.S.C. sec. 1981, providing for the equal rights of all persons in every state and territory have been instituted and/or maintained by the defendants, as well as violations of the duty of fair representation owed to plaintiffs under 29 U.S.C. secs. 151 et seq.

(A) On or about October 2, 1970, the plaintiffs, L. N. McDonald and Raymond Laird were discharged from employment by Defendant, Santa Fe Trail Transportation Company without cause and on information and belief, Plaintiffs alleges that they were discharged of their race, Caucasian.

(B) On or about September 26, 1970, Plaintiffs, along with one negro employee, Charles Jackson were all charged jointly and severally charged with mis-appropriating company property, to-wit; ten cases of six one gallon cans of anti-freeze, all of which were part of a shipment of twenty-five cases being shipped to Defendants' customers.

(C) On October 2, 1970, Defendant discharged Plaintiffs, L. N. McDonald and Raymond L. Laird while retaining the negro employee, Charles Jackson in its employ, Plaintiffs alleges that Defendant imposed a more severe disciplinary sanction against them because of their race, Caucasian than against their negro counterpart.

(D) On or about October 2, 1970, Plaintiffs filed a grievance with the Local Union 988 pursuant to the Article 44 of its collective bargaining agreement in accordance with the Procedure outlined for settling such disputes.

(E) On or about April 3, 1971, Plaintiffs were notified in writing by Local Union 988 that it would not pursue the claim or grievance any further and would not seek arbitration.

(F) On or about April 7, 1971, Plaintiffs filed a complaint with the E.E.O.C. which was approximately six months and three days from the day the grievance was first filed with the Union. Plaintiffs alleges that the delay in filing with the E.E.O.C. was consumed in grievance procedures under an existing collective bargaining agreement and that the 90-day statute was tolled during such period.

VII.

On April 7, 1971, Plaintiffs filed a timely and proper complaint before the Equal Employment Opportunity Commission (E.E.O.C.) alleging denial by Defendant of their rights under Title VII of the Civil Rights Act of 1964, 42 U.S.C., Section 2000e et seq. On July 15, 1971, the Commission notified plaintiffs under the provisions of Section 706 (e) of Title VII of the Civil Rights Act of 1964, the plaintiffs had the right to bring a civil action in a United States District Court.

Neither the State of Texas nor the City of Houston has a law prohibiting the unlawful employment practices alleged herein.

VIII.

Plaintiffs does hereby incorporate and adopt by reference all of the allegations set forth in Paragraph I through VII of this complaint.

IX.

At all times material herein Local 988 and the International Brotherhood of Teamsters have been certified recognized representives under the National Labor Relations Act of the plaintiffs and the class they represent.

X.

Defendants, International Brotherhood of Teamsters and Local 988 have violated and continue to violate their duty of fair representation imposed on them by the National Labor Relations Act in that they have acquiesced and/or joined in the unlawful and discriminatory practices complained of in Paragraph VI and they have failed to protect the White members of the Company from said discriminatory policies and practices. The Company has knowingly participated in or acquiesced in said violation of the duty of fair representation.

XI.

Plaintiffs and the class they represent have no plain, adequate or complete remedy at law to redress the wrongs alleged herein and this suit for a preliminary and permanent injunction is their only means of securing adequate relief. Plaintiffs and the class they represent are now suffering and will continue to suffer irreparable injury from the defendant's policies, practices, customs and usages as set forth herein.

WHEREFORE, Plaintiffs respectfully pray this Court to advance this case on the docket, order a speedy hearing at the earliest practicable date, cause this case to be in every way expedited and upon such hearing to:

1. Grant Plaintiffs and the class they represents a permanent injunction enjoining the defendant Santa Fe Transportation Co. its agents, successors, employees, attorneys and those acting in concert with it at its direction from continuing to maintain discriminatory disciplinary policies that imposes more severe disciplinary sanctions against Plaintiffs because of their race, Caucasian than against their Negro counter-part, denying Plaintiffs rights to equal treatment as secured by Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e et seq.

2. Grant Plaintiffs a preliminary injunction ordering the Defendant, Santa Fe Trail Transportation Co. to reinstate L. N. McDonald and Raymond L. Laird with all back pay wages lost, monetary losses and seniority lost as a result of the discriminatory discharge.

3. Grant Plaintiffs and the class they represent a permanent injunction enjoining the defendant, International Brotherhood of Teamsters Local 988, its agents, successors, employees, attorneys and those acting in concert with it and at its direction from continuing or maintaining the policy, practice, custom and usage of denying, abridging, withholding, conditioning, limiting, or otherwise interfering with the rights of plaintiffs to be impartially and fairly represented on the basis of merit rather that race, and the right to equal representation as secured by Title VII of the Civil Rights Act of 1964, 42 U.S.C., Sections 2000e et seq.

4. Grant Plaintiffs and the class they represent a permanent injunction enjoining the defendant International Brotherhood of Teamsters Local 988 its agents, successors, employees, and those acting in concert with it from refusing to properly and diligently represent plaintiffs and the class they represent.

5. Order the Defendants to take that affirmative action necessary to correct the practices, policies, customs and usages which discriminates against Plaintiffs and members of the class plaintiffs represents because of their race, Caucasian.

6. Plaintiffs further prays that this Court will allow them cost herein, reasonable attorney's fees and grant such further additional or alternative relief as may appear to the court to be equitable and just.

Respectfully submitted,

JAMES BULLOCK
Attorney at Law
4719 Dowling Street
Houston, Texas 77004
713-529-4701

(Certificate of Service Omitted in Printing)

IN THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

(Title Omitted in Printing)

COMBINED NOTICE OF AND
MOTION TO DISMISS

TO: Mr. James Bullock, Attorney for the Plaintiffs
Bullock, Jackson and Rogers
4719 Dowling Street
Houston, Texas 77004

Please take notice that the undersigned will move this Honorable Court at the Courtroom in the Federal Building at 515 Rusk Avenue on the 13th day of August, 1973, at 10:00 in the forenoon of that day or as soon thereafter as counsel can be heard for an order dismissing the above entitled and numbered civil action against Defendant, Teamsters Freight, Tank Line & Automobile Industry Employees, Local Union No. 988, on the grounds set out below.

Defendant Union will seek an order from the Court dismissing this action as to it on the basis that:

1. The Court lacks jurisdiction over Defendant Union under the Title VII allegations of the Complaint (42 U.S.C. Section 2000e-5(f), 2201 and 2202) because Plaintiffs have not filed a sworn charge with the Equal Employment Opportunity Commission alleging that defendant Union has committed discriminatory employment

practices against either Plaintiff. Since such a charge is a jurisdictional prerequisite to the institution of a civil suit, it follows that the Title VII allegations in the Complaint should be dismissed as to Defendant Union for failure to exhaust the administrative remedies available in the statute.

2. It is questionable as to whether the provisions of 42 U.S.C. Section 1981 apply to the two Caucasian Plaintiffs.

3. Plaintiff, Raymond L. Laird, a member of the supervisory force of Defendant Employer was not within the coverage of the collective bargaining agreement between Defendant Union and Defendant Employer. Defendant Union has no contractual or legal right to review discharges or other dispositions Defendant Employer may make of its supervisory and managerial forces. The Labor-Management Relations Act forbids unions to insist that employers treat or bargain with them in any respect concerning supervisors.

On the other hand, Defendant Union accepted the grievance of L. N. McDonald complaining of an unjust discharge, investigated and prosecuted said grievance to a final and binding award in the arbitration tribunal provided for in the collective bargaining contract between Defendant Employer and Defendant Union, thereby fulfilling its fair representation obligations.

For the reasons stated, the Complaint of L. N. McDonald and Raymond Laird fail to state a claim upon which relief can be granted against Defendant Local Union 988.

WHEREFORE, Defendant Union moves the Court for an order dismissing this action as to Defendant Union and for its costs.

Respectfully submitted,

James P. Wolf
Attorney in Charge

OF COUNSEL:

DIXIE, WOLF & HALL
Suite 401, 609 Fannin St. Bldg.
Houston, Texas 77002
223-4444
ATTORNEYS FOR DEFENDANT
LOCAL UNION NO. 988

(Certificate of Service Omitted in Printing)

IN THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

(Title Omitted in Printing)

DEFENDANT'S, TEAMSTERS LOCAL UNION NO. 988'S, BRIEF IN SUPPORT OF ITS MOTION TO DISMISS

TO THE HONORABLE CARL O. BUE, JR.,
Judge, United States District Court:

Defendant Local Union No. 988 seeks an order from this Court for the dismissal of all or part of Plaintiffs' case against the Local Union. Because the Motion to Dismiss must be considered in respect to two separate Civil Rights Statutes, this memorandum will address itself to the different statutory requirements of the Court's jurisdiction.

I.

TITLE VII ALLEGATIONS AS TO DEFENDANT LOCAL UNION SHOULD BE DISMISSED

Plaintiffs did not file a charge with the Equal Employment Opportunity Commission alleging a violation of Title VII of the Civil Rights Act of 1964 by Defendant Local Union 988. Such a charge alleging that Defendant Local Union has committed discriminatory employment practices as defined by the Civil Rights Act of 1964 is a jurisdictional prerequisite to the institution of civil suit against Defendant Local Union under 42 U.S.C. Section 2000e, *et seq.* (See 42 U.S.C. Section 2000e-5.)

Precise authority for Defendant's contention in this regard is found in the Hallmark case of *Miller v. International Paper Company, et al.*, 409 F.2d 283, at 291 (5th Cir., 1969). See also *Beverly v. Lone Star Lead Crnst. Corp.*, 437 F.2d 1136 (5th Cir., 1971; *Sanchez v. Standard Brands, Inc.*, 431 F.2d 455 (5th Cir., 1970).

As dismissed in the pre-trial meeting, while it is true that Plaintiffs may proceed against Union Defendant under Title 42 U.S.C. Section 1981, if they have pled and proved sufficient excuse tor not filing charges against Defendant Union with the Equal Opportunities Commission, their cause of action against said Union Defendant must be limited to the Civil War statutes. *Water v. Wisconsin Steelworkers International Harvester*, 427 F.2d 478, 488 (7th Cir., 1970), cert. denied 400 U.S. 911.

II.

THE REMAINING ALLEGATIONS UNDER SECTION 1981 SHOULD BE DISMISSED

Without attempting to resolve any question about failure to exhaust the Title VII remedy as a prerequisite for a Section 1981 suit. Defendant Local Union submits that there is a serious question as to whether two Caucasians can sue Defendant Local Union under Section 1981. Section 1981 provides that all persons within the United States shall have the same rights as "is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other." In *Jones v. Alfred H. Meyer Co.*, 392 U.S. 362 (1968), the Supreme Court traced the origin of Section 1981. Its review of the history of the Civil Rights Act following the Civil War showed that its concern was to make certain that the laws of the country

would apply thereafter without regard to any previous condition of slavery or involuntary services. The Acts were directed with particularity towards the rights of black people because these were the people who had been discriminated against and who had been in a condition of involuntary servitude. We concede that the literal purpose of the Act is to guarantee equal rights to all citizens regardless of race or previous condition of servitude. But since the literal terms of the Act equate the protection with the rights of white citizens and its purpose was to relieve black people of unequal treatment, it would appear to follow that it is necessary to plead and prove that these Plaintiffs have been denied rights enjoyed by other white citizens. This has not been done; at most, Plaintiffs' petition amounts to a complaint that a black employee was dealt with more leniently for the same misdeed because they were Caucasians.

Other than the bare bones conclusion alleged about discipline imposed as between three persons, Plaintiffs have not plead any detrimental classification of whites or any specific qualifications or actions designed to deprive them of the right of white citizens. To the contrary, the Complaint shows that one of the Plaintiffs occupied a supervisory position.

We do not propose to mislead the Court on this point. We do not know of any definitive ruling on this subject by the Supreme Court. The cases that have permitted suit by whites under this section have generally fallen into a category where restrictive classifications of a particular group were imposed so as to deprive some citizens of rights that should have been available for all. Plaintiffs' pleading at this juncture does not allege such a situation and for this reason we say its allegations under Section 1981 should be dismissed.

If the mere allegation that they were discharged because they were caucasian is enough to preserve the issue, we will reurge this motion at a later point.

III.

THE COMPLAINT FAILS TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED AND/OR BARRED

Plaintiff, Raymond L. Laird, is identified in Plaintiff's petition as a dock foreman for Defendant Employer. As such he is part of supervision and is not part of the appropriate bargaining unit covered by the terms of the collective bargaining agreement in effect between Defendant-Employer and Defendant Local Union.

The Congress of the United States amended the original Labor Act known as the Wagner Act in 1947 by passage of what was popularly known as the Taft-Hartley Act. (29 U.S.C. Sec. 141, et seq.) One of main items of controversy in these amendments was the Congressional action which removed supervisors from the bargaining unit and representation by unions. In *NLRB v. Edward G. Budd Manufacturing Company*, 169 F.2d 571 (6th Cir., 1948), cert. den'd, 335 U.S. 908 (1948), the Sixth Circuit upheld the constitutionality of the supervisory amendments of Taft-Hartley. This decision was followed by a series of opinions by the Ninth Circuit, all of which were concerned with the efforts of the Union to compel the Employer to deal with the Union about supervisors. These opinions are reported as follows: *NLRB v. Retail Clerks*, 186 F.2d 371 (9th Cir., 1951); *NLRB v. Retail Clerks*, 203 F.2 165 (9th Cir., 1953); *NLRB v. Retail Clerks*, 211 F.2d 759 (9th Cir., 1954),

cert. denied 348 U.S. 839 (1954); *NLRB v. Retail Clerks*, 243 F.2d 777 (9th Cir., 1956).

The Ninth Circuit litigation above began on the basis of an agreed enforcement order which required the union not to refuse to bargain with the Employer "by insisting or demanding as a condition to such bargaining that Safeway, the Employer, bargain collectively for supervisory employees." In 203 F.2d 165, the Ninth Circuit determined the Union was in contempt of the agreed enforcement order because the Union imposed as a condition to its bargaining that Safeway bargain about location managers which the Board held to be supervisors. After finding the Union in contempt because of its insistence that the Employer treat with it concerning supervisors, the Court found that the Union was prohibited from making demands which covered supervisory employment and working conditions, what work the supervisors may do, and who may be employed as supervisors.

In the course of its opinion, the Court held that the legislative history of Taft-Hartley had as a primary objective "to assure to the Employer his right to procure the loyalty and efficiency of his supervisors and managers." The Court found that Congress had decided it could remedy certain evils by the supervisory amendment and that it had laid much emphasis upon the desirability of making supervisors independent of union and of rank and file in the appropriate bargaining units. Employers would be sharply restricted in obtaining loyal and efficient supervisors if the Union could intrude in the relationship between supervisors and the Employer. The Court found that the purpose of Congress in the amendment was to avoid the encroachment upon the

rights of employers to select and control supervisors and to obtain their full loyalty and cooperation without interference from the union.

In 1952, the *Texas Company v. NLRB*, 198 F.2d 540 (C.A. 5, 1952), the Fifth Circuit laid down the rule that supervisors may be discharged for refusing to perform bargaining unit work behind a picket line. The Employer had decided to resume production operations while the strike was in effect and a foreman was assigned to do operations work which was normally performed by employees in the collective bargaining unit. The particular foreman declined because of his long membership in the union in past years when he had been a member of the bargaining unit, and in part, allegedly, because of physical fear. He was discharged. The Board attempted to reinstate the foreman because the reason for his discharge was concerted activity which would have been unlawful if he had been an employee. In rejecting the Board's position, the Court referred to the legislative purpose to remove supervisors from the Act and place them in management, thereby restoring to the employers the rights and power to insist on their undivided loyalty. In particular, the court quoted Senator Taft's remarks that foremen must be made "wholly loyal" and that in between steps had been considered but rejected by the Congressional Committee because foremen had to be entirely management. See also *Typographical Union, Local 38 v. NLRB*, 365 U.S. 705 (1961), enf. 278 F.2d 266 (1st Cir. 1960).

Supervisors at Santa Fe are not included in the bargaining unit covered by the collective bargaining contract. Defendant Employer has not and does not agree that Defendant Union can represent or bargain for supervisors and it would be a violation of the Federal Labor Law for

Defendant Local Union to attempt to represent supervisors over objection by the Employer. There is no duty of fair representation to supervisors imposed on Defendant Local 988 by the Labor Management Relations Act and there is no contractual duty owed to them. To the contrary, Defendant Local Union is prohibited from such representation in the circumstances of the instant case. The National Labor Relations Board is prohibited from finding a unit appropriate for bargaining if it includes supervisors.

Since Defendant Union had nothing to do with causing or bringing about the discharge of Raymond L. Laird and the only complaint addressed to it is the claimed failure of duty of fair representation, it follows that the remainder of the complaint dealing with Section 1981 and the duty of fair representation as to Raymond L. Laird should be dismissed.

Further, the complaint of L. N. McDonald should be dismissed because his discharge has already been submitted to final and binding arbitration. Defendant Local Union investigated and vigorously processed his discharge grievance to final arbitration. Although there is some area of uncertainty as to the effect of arbitration in this area, there is compelling judicial authority for the proposition that the arbitration decision is binding on the affected employee, as well as the Union and the Employer and is a bar to a Title VII suit. A ruling to this effect is found in *Dewey v. Reynolds Metal Company*, 429 F.2d 324 (6th Cir., 1970), affirmed by an equally divided Supreme Court, 91 S.Ct. 2186 (1971).

We candidly state to the Court that this proposition is not yet sharply etched in black and white in the existing

law. We are aware that a different doctrine had been enunciated in the Fifth Circuit. Even so, the original Fifth Circuit doctrine that arbitration was no bar to this type of action is currently undergoing modification.

The question of arbitration as a bar to a Title VII action was again considered in *Rios v. Reynolds Metals Company* 467 F.2d 54 (5th Cir., Sept. 1972), 5 F.E.P. Cases 1. The Court reviewed its decision in *Hutchins v. United States Industries, Inc.*, 428 F.2d 303, stating that it had touched on the arbitration question in a peripheral manner in said case. Although the Circuit did not rely on the *Dewey* case, supra, and its affirmation by the Supreme Court, the Court modified its original doctrine by holding that a Federal District Court could exercise its discretionary power of deferring matters such as discharge to arbitration comparable to the action of the National Labor Relations Board. The Federal Board doctrine requires arbitration proceedings to be fair and regular with all parties having agreed to be bound and that the decision of the Arbitration Panel be not clearly repugnant to the purposes and policies of the Act. The Circuit Court approved this test.

The contract itself expressly prohibits discrimination for racial reasons. Plaintiff McDonald has not alleged that the arbitration proceedings he participated in was not fair or regular or that the decision of the panel was clearly repugnant to the purposes and policies of the Act. It appears that this doctrine may still be developing in this Circuit, as well as in other circuits in the country. Other expressions on this point are to be found in *Taylor v. Springmeyer Shipping Company*, ____ F. Supp. ____, Western District of Tennessee (July, 1971), 4 F.E.P. 322. There the court granted Defendant's motion for

summary judgment on the authority of *Dewey v. Reynolds Metals Company*, supra. In *Phillips v. Columbia Gas of West Virginia, Inc.*, 347 F.Supp. 533 (Sept. 1972), the court ruled on whether or not an employer and union were entitled to a summary judgment in an action under 42 U.S.C. Section 1981 by a Caucasian employee claiming racial discrimination to be the cause of his discharge. As part of this finding, the court found that Defendant Union in processing the Plaintiff's grievance through the steps provided for in the collective bargaining agreement, including the arbitration hearing, fairly and adequately represented him.

The court relied on the Supreme Court's decision in *Vaca v. Sipes*, 386 U.S. 171 (1967), for the legal standards under which a union could be liable for a breach of the duty of fair representation. It found the Union had fulfilled its duty by arbitrating the matter.

WHEREFORE, premises considered, Defendant Local Union 988 prays that its motion to be dismissed be granted and that it go hence without day.

Respectfully submitted,

James P. Wolf
Attorney in Charge

OF COUNSEL
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223-4444
ATTORNEYS FOR LOCAL UNION NO. 988

(Certificate of Service Omitted in Printing)

IN THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

DEFENDANT LOCAL UNION NO. 988's FIRST AMENDED ANSWER

COMES NOW Teamsters Freight, Tank Line & Automobile Industry Employees, Local Union No. 988, captioned International Brotherhood of Teamsters Local No. 988 in Plaintiffs' Second Amended Complaint, and hereafter known as Local No. 988, and files this response to the said Complaint, showing the Court as follows:

I.
FIRST DEFENSE

The Complaint fails to state a claim upon which relief can be granted. The Complaint is also deficient as a class action because Plaintiffs cannot be said to fairly insure the adequate representation of the alleged class and, therefore, it is not a proper class action within the requirements of Rule 23(b)(2) of the Federal Rules of Civil Procedure. The alleged right sought to be enforced by this complaint is not typical or limited to the claims of the affected class and many questions of law and/or facts asserted as affecting the civil rights of employees are not common.

II.
SECOND DEFENSE

This Court is without jurisdiction of Defendant Local Union No. 988 as to its Title VII allegations because Plaintiffs have not complied with the filing requirements of the Civil Rights Act of 1964, 42 U.S.C. Sec. 2000e-

5(e). A charge against Defendant Local No. 988 is a jurisdictional prerequisite under the terms of the Act.

III.
THIRD DEFENSE

Plaintiffs' Complaint fails to state any reasonable basis or excuse for failing to utilize the remedies provided by Title VII. Further, Plaintiff has failed to utilize or exhaust their contractual, their internal Union remedies, or their remedies under the Labor-Management Relations Act before bringing this action. For these reasons the Complaint should be dismissed as to Local Union No. 988.

IV.
FOURTH DEFENSE

Except for conclusionary allegations claiming discriminatory policies, practices, customs and usages which discriminate against members in the alleged class of Caucasians, the Complaint, renders down to an allegation that the two white Plaintiffs were discharged on or about October 2, 1970 by Defendant-Employer on charges that Plaintiffs had misappropriated Company property. The Complaint concludes because the Plaintiffs and one Negro employee were charged with misappropriation of Company property and the Negro employee was not discharged that Defendant-Employer imposed different discriminatory discipline sanctions against them because of their Caucasian race than against their Negro counterpart.

The Complaint identifies Plaintiff Raymond L. Laird as a dock foreman at the Company's Houston Terminal. As such, Plaintiff Laird differs from Pliaintiff L. N. McDonald in that Plaintiff Laird as a foreman and supervisor is not within the appropriate unit for bargaining nor with-

in the contract covering said appropriate unit. Defendant Union is prohibited from requiring the Company to recognize it as the representative of foremen or supervisory personnel by the Labor-Management Relations Act., 29 U.S.C. 151 et seq. The statutory difference between the two Plaintiffs not only shows that a class action does not exist in this case but explains why a grievance concerning the discharge of Plaintiff McDonald was processed by Defendant Local Union but was not for Laird. A copy of this grievance marked Exhibit A-1 and A-2 is attached to this answer. The Complaint should be dismissed as to Plaintiff Laird, because Defendant Local 988 has no statutory or contractual right or duty to interfere with Defendant-Employer's selection of its supervisory personnel.

On the other hand, Plaintiff McDonald's grievance complaining that his discharge was forbidden by the contract because it was not for just cause, was processed through the steps of the contract and taken to final binding arbitration by the Union in compliance with the contractual terms. The Award denying Plaintiff McDonald's grievance was final and binding on all parties.

The collective bargaining contract in effect between Defendant Union and Defendant-Employer, protects employees against discharge or suspension except for just cause and also contains a clause against non-discrimination. It reads as follows:

> "The Employer and the Union agree not to discriminate against any individual with respect to his hiring compensation, terms or conditions or employment because of such individual's race, color, religion, sex or national origin, nor will they limit, segregate or classify employees in any way to deprive any individual employee of employment opportunities be-

cause of his race, color, religion, sex or national origin.

Plaintiff L. N. McDonald elected to pursue his contractual remedies for his discharge and any alleged discrimination on or about October 8, 1970. The main issue as to whether Plaintiff was discriminated against unjustly by a discharge has been judicially and finally decided by an arbitration tribunal of competent and proper jurisdiction in accordance with the collective bargaining contract. After full hearing, his grievance was denied on or about October 21, 1970. Plaintiff McDonald's Complaint should be dismissed because this action for discriminatory discharge is barred because he elected to have his claim determined through the grievance procedure in the collective bargaining agreement and is now estopped from asserting the same claim in a new form in this action.

V.

FIFTH DEFENSE

Without waiver of the foregoing defenses, and subject thereto, Defendant Local No. 988 further responds to Plaintiff's pleading as follows:

1. Defendant Local 988 denies jurisdiction of the Court here under Title VII of the Civil Rights Act of 1964, or under 42 U.S.C. Section 1981 and 1983, for the reasons stated above.

2. Defendant denies that this is a proper procedure for a Declaratory Judgment or that this is a class action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure.

3. Although Plaintiff alleges a class composed of Caucasians who are employed, or might be employees of Defendant company, it has not shown a classification of

white persons which establishes that Caucasians are treated different from white persons by this Employer. As a matter of fact, one Plaintiff is a member of supervision and the other Plaintiff is a rank and file member of the appropriate bargaining unit. Congress has eliminated supervisory employees from the definition of employee in the Labor Management Act. The same Act prohibits Unions from requiring an employer to recognize them as representatives of supervisory employees or to bargain concerning supervisory conditions of work hire or tenure. Defendant deny their common questions of law and fact affecting the rights of these Plaintiffs or members of the alleged class. Defendant further denies that it has caused members of the alleged class or any class to be limited or classified and discriminated against in ways which deprive or tend to deprive them of equal employment opportunities or otherwise affect their status as employees because of race.

4. The allegations of Plaintiffs in paragraph IV are admitted except for the fact that Plaintiff Raymond L. Laird has been on withdrawal status from membership since his promotion to foreman at Defendant-Employer.

5. Defendant is without knowledge as to exact operations of Defendant Santa Fe Trail Transportation Company, but admits that it is a labor organization within the meaning of 42 U.S.C. Section 2000 (e)(d)(c).

6. Defendant denies that it has instituted or maintained unlawful policies, practices, customs or usages or that it has violated any duty of fair representation owed to Plaintiffs under 29 U.S.C. Section 151, et seq.

(A) Plaintiffs were discharged by Defendant-Employer. The only information furnished to Defendant Local 988,

was that the discharge was for misappropriation of property.

(B) Defendant admits that Plaintiff L. N. Laird was charged with misappropriating Company property on or about September 26, 1970.

(C) Admitted except for the statement that Defendant-Employer imposed a more severe disciplinary action against the two caucasions because of race than their negro counterpart. Defendant Local Union was informed by Defendant-Employer that Plaintiff McDonald was discharged for misappropriation of Company property. It has no basis for believing that Defendant-Employer has imposed different conditions on caucasians than negroes.

(D) Admitted that Plaintiff L. N. McDonald filed a grievance on or about October 8, 1970. There is no record of Plaintiff Laird filing a grievance under the contract.

(E) Denied. Defendant Local 988 processed the grievance of Plaintiff through the contractual grievance procedure to final arbitration hearing at Biloxi, Mississippi, beginning on October 19, 1970. The decision of the arbitration tribunal in October, 1970, was a denial of the grievance with costs against the Union.

(F) Defendant Local 988 is without sufficient knowledge to enable it to either affirm or deny allegation of Plaintiffs in Paragraph VI (F).

7. Defendant Local 988 denies that Plaintiffs filed a timely Complaint before the Equal Employment Opportunities Commission, alleging a denial of their rights by Defendant Local 988, under Title VII of the Civil Rights Act.

8. Defendant Local 988 admits it is a signatory party to the collective bargaining agreement.

9. Defendant Local 988 denies that it has violated or continues to violate its duty of fair representation required by the Labor Management Relations Act. It denies that it acquiesced and/or joined in any unlawful or discriminatory practices or that it has failed to protect the white members of the bargaining unit or any members of the bargaining unit from discriminatory policies or practices. Defendant Local 988 is not authorized to act as an agent or a representative in this action for the International Brotherhood of Teamsters Chauffeurs, Warehousemen and Helpers of America.

10. Defendants deny that Plaintiffs have no plain adequate or complete remedy at law to redress the alleged wrongs stated in their Complaint in that complete relief and remedies for the same are provided in:

(a) the current collective bargaining agreement,

(b) Section 301 of the Labor Management Relations Act,

(c) remedies provided for in the Local Union and the International Union's Constitution and By-Laws.

(d) the Labor Management Relations Act.

Further, there is no reparable injury in the substance of Plaintiffs' Complaint that cannot be adequately remedied by this Court without resort to injunctive relief.

11. Defendant specifically denies that it has instituted, maintained and/or acquiesced in discriminatory practices, policies, customs and usages or that it denied Plaintiffs, or other employees, a fair representation because of race, or that it has in any way adversely affected the status of any

employee for discriminatory reasons. Defendant has not acquiesced in any policy, practice, custom or usage that would circumvent its collective bargaining contract which strictly requires that all persons in the bargaining unit be treated equally and without discrimination. Defendant denies it has conspired or acted in collusion with Defendant-Employer to deny these Plaintiffs or any employee of any rights. Defendant also denies that it breached its duty of fair representation or acted arbitrarily, capriciously, in bad faith or for any invidious motivation toward these Plaintiffs. To the contrary, in regard to Plaintiff Employee L. N. McDonald, who filed a grievance, the Union represented him fully, fairly and vigorously in his grievance to a final and binding arbitration award. The final award denied the grievance with costs to the Union.

WHEREFORE, premises considered, Defendant Local Union No. 988, prays that upon final trial and hearing hereof, the Plaintiffs' actions be dismissed in its entirety as to Defendant Local Union No. 988, and that Plaintiffs take nothing and that Defendant recover all costs of court incurred and have such other and further relief, both general and special, legal and equitable, to which it may show itself entitled.

Respectfully submitted,

_____

James P. Wolf
Attorney in Charge

OF COUNSEL:

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713/223 4444
ATTORNEYS FOR DEFENDANT LOCAL No. 988

(Certificate of Service Omitted in Printing)

IN THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

(Title Omitted in Printing)

ORIGINAL ANSWER OF DEFENDANT, THE SANTA FE TRAIL TRANSPORATION COMPANY

Comes now THE SANTA FE TRAIL TRANSPORTATION COMPANY, one of the defendants herein, and files this, its Answer to Plaintiffs' Second Amended Complaint, and would show the court as follows:

I.
FIRST DEFENSE

The Complaint fails to state a claim as a class-action upon which a class-action relief may be granted, in that members of the alleged class are not so numerous as to make it impractical to bring them before the Court and that the claim asserted by the plaintiffs is not typical of alleged claims of the affected class, and that the relief sought does not represent nor is typical or limited to the claims of the affected class which would present many questions of law and/or fact not common to the Complaint of these plaintiffs, and that the plaintiffs cannot be said to be representative parties who will fairly and adequately protect the interests of the affected class.

II.
SECOND DEFENSE

This Court is without jurisdiction in that plaintiffs fail to comply with 42 USC Sec. 2000e-5(d).

III.
THIRD DEFENSE

Plaintiff McDonald elected to pursue his contractual remedies for his discharge by filing a Grievance under the Collective Bargaining Agreement between employer and the co-defendant Union, which proceeded to binding arbitration after a full hearing, which arbitration was concluded in October, 1970, after which plaintiff McDonald failed to timely file written Complaint with the Equal Employment Opportunity Commission.

IV.
FOURTH DEFENSE

The Complaint fails to state a cause of action upon which relief may be granted under the provisions of 42 USC Sec. 1981, because the two (2) white plaintiffs are not believed to be within a class protected by such provisions, as a matter of law.

V.
FIFTH DEFENSE

Without waiving the foregoing defenses and subject thereto, defendant further responds to Plaintiffs' Second Amended Complaint, as follows:

1. This defendant denies jurisdiction of the Court under Title VII of the Civil Rights Act of 1964 or under 42 USC Secs. 1981 and 1983.

2. This defendant denies that this is a proper class action pursuant to Rule 23 of the Federal Rules of Civil Procedure, and otherwise denies the allegations of Paragraph II.

3. This defendant denies that this is a proper procedure for a Declaratory Judgment or for injunctive relief.

4. The allegations of Paragraph IV of Plaintiff's Complaint are admitted, except that this defendant denies, on information and belief, that plaintiff, Raymond L. Laird, is a member in good standing in Local 988, and denies that he was employed as Dock Foreman for this defendant for nine and a half (9½) years. Plaintiff Laird was employed as Docket Foreman at the time of his termination but had not been employed in that capacity for nine and a half (9½) years.

5. This defendant admits the allegations of Paragraph V as to it, but does not have sufficient information to either admit or deny the allegations as to International Brotherhood of Teamsters Local No. 988.

6. This defendant denies the allegations of the first paragraph of Paragraph VI.

(a) This defendant admits that plaintiffs, L. N. McDonald and Raymond Laird, were discharged from employment by this defendant on or about October 2, 1970, but denies that they were discharged by reason of their Caucasian race.

(b) This defendant denies that plaintiffs, along with one negro employee, Charles Jackson, were all charged jointly and severally with misappropriating company property, but admits that a general investigation of misappropriated cargo and cargoes, including ten (10) cases of six (6) one-gallon cans of anti-freeze, was instituted and conducted, along with an investigation of possible violation of company rules, which investigation did include plaintiffs, Laird and McDonald, and employee, Charles Jackson, and others.

(c) This defendant admits that on or about October 2, 1970, plaintiffs, L. N. McDonald and Raymond Laird, were discharged, and admits that negro employee, Charles Jackson, was not discharged, but denies any discrepancy in disciplinary sanctions among or between these employees by reason of their race.

(d) This defendant admits that plaintiff, L. N. McDonald, filed a Grievance on or about October 2, 1970, but, on information and belief, denies that plaintiff Laird filed a Grievance with said Union under its Collective Bargaining Agreement with this defendant.

(e) This defendant denies the allegations of Paragraph (e).

(f) This defendant does not have sufficient knowledge to either admit or deny the allegations of Paragraph (f), though the copy of written Complaint of L. N. McDonald, furnished to this defendant, was dated after April 7, 1971.

7. This defendant denies the allegations of Paragraph VII, insofar as such allegations claim a timely and proper filing of Complaint.

8. The allegations of Paragraph VIII, insofar as it incorporates and adopts by reference allegations previously denied by this defendant, are again denied.

9. This defendant admits that it and Local 988 are signatory parties to a Collective Bargaining Agreement.

10. The allegations of Paragraph X directed to this defendant are denied and, insofar as this defendant knows or believes, the defendant, International Brotherhood of Teamsters Local 988, has violated no duty as to their representation imposed upon it by the National Labor Relations Act, and this defendant, denying any unlawful

and discriminatory practices complained of in Paragraph VI, therefore, denies any acquiescence and/or joining in any such alleged practices, since it is denied that any such practices exist.

11. The allegations of Paragraph XI are denied.

12. It is denied that plaintiffs are entitled to the relief sought in their prayer.

WHEREFORE, premises considered, this defendant prays that, upon final trial and hearing hereof, the plaintiffs' action be dismissed in its entirety as to this defendant, and that plaintiffs take nothing and that this defendant recover all costs of Court incurred and such other and further relief to which the Court may find this defendant to be entitled.

Respectfully submitted,

McLEOD, ALEXANDER,
POWEL & APFFEL, INC.

By: _____

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(Certificate of Service Omitted in Printing)

IN THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

(Title Omitted in Printing)

DEFENDANT'S, THE SANTA FE TRAIL TRANSPORTATION COMPANY'S MOTION TO DISMISS

TO THE HONORABLE COURT:

Comes now THE SANTA FE TRAIL TRANSPORTATION COMPANY, one of the defendants in the above entitled and numbered cause, and makes and files its Motion to Dismiss respective plaintiff's' above entitled action against defendant, The Santa Fe Trail Transportation Company, and, as grounds therefor, would respectfully show the Court as follows:

I

Defendant, The Santa Fe Trail Transportation Company, moves this Court for an Order dismissing the above entitled action as a class action on the grounds that the Complaint fails to state a claim entitling plaintiffs to relief in a class action, on the following grounds:

a. Members of the alleged class are not so numerous as to make it impractical to bring them before the Court.

b. Plaintiffs' Complaint states only one instance of alleged racial discrimination in the discharging of the two (2) white plaintiffs-employees and failure to discharge

one (1) negro employee; therefore, the claim is not typical of alleged claims of the affected class.

c. The broad, unspecified allegations of discrimination of the affected class presents many questions of law and/or facts not common to the Complaint of these plaintiffs.

d. Plaintiffs cannot be said to be representative parties who will fairly and adequately protect the interest of the affected class.

II.

This defendant moves the Court for an Order dismissing the above entitled action for want of jurisdiction on the grounds that plaintiffs failed to comply with 42 U.S.C. 2000e-5(d). As shown by Plaintiffs' Complaint, the alleged unlawful employment practice upon which plaintiffs rely herein occurred on October 2, 1970, and, as further shown by Plaintiffs' Complaint, a written charge by plaintiffs, complaining of unlawful employment practices was not filed with the Equal Employment Opportunity Commission until April 7, 1971, some one hundred eighty-seven (187) days after the alleged occurrence; and, as further alleged in Plaintiffs' Complaint, neither the State of Texas nor the City of Houston has any law prohibiting the alleged unlawful employment practices complained of by plaintiffs herein. As to the respective plaintiffs, this defendant specifically alleges:

a. Plaintiff, L. N. McDonald. The Second Amended Complaint alleges that plaintiffs filed a Grievance with Local Union 988 in a proceeding under the Collective Bargaining Agreement between said Local and the de-

fendant-employer. In truth and in fact, however, plaintiff McDonald did file such a Grievance on or about October 2, 1970, such Grievance proceeding to arbitration on October 29, 1970. Accordingly, even if limitation be tolled during such time, McDonald failed to file the written Charge with the Equal Employment Opportunity Commission within ninety (90) days after determination of his rights under the Collective Bargaining Agreement, so that he has still not met the ninety (90) days filing requirement prerequisite to the institution of suit.

b. Plaintiff, Raymond Laird. He was a member of the supervisory force of defendant-employer and was not within the coverage of the Collective Bargaining Agreement between defendants Union and employer. Laird never filed a written Charge with the Equal Employment Opportunity Commission and, even if the Charge filed by McDonald encompasses Laird, plaintiff Laird has no excuse or justification for failing to file a written Charge with the Equal Employment Opportunity Commission within ninety (90) days of the alleged occurrence of discrimination, which is a condition precedent and a jurisdictional prerequisite to filing of suit herein.

III.

Defendant moves the Court for an Order dismissing the above entitled action insofar as it seeks relief under the provisions of 42 U.S.C. Sec. 1981, because the two (2) white plaintiffs are not believed to be within a class protected by such provisions.

WHEREFORE, premises considered, defendant, The Santa Fe Trail Transportation Company, respectfully moves the Court to dismiss plaintiffs' action against said defendant.

McLEOD, ALEXANDER,
POWEL & APFFEL, INC.

By: _____

Benjamin R. Powel
Attorney in Charge
808 Sealy & Smith Prof. Bldg.
P. O. Box 629
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Tele. No. AC-713, 763-2481

NOTICE OF MOTION

TO: MR. JAMES BULLOCK, 4719 Dowling Street, Houston, Texas 77004, Attorney for Plaintiffs; and MR. JAMES P. WOLF, Dixie, Wolf & Hall, Suite 401, 609 Fannin Street, Houston, Texas 77002, Attorney for Defendant, Local Union No. 988:

Please take notice that the undersigned will bring the above and foregoing Motion on for hearing on Monday, December 3, 1973, or as soon thereafter as counsel may be heard.

McLEOD, ALEXANDER,
POWEL & APFFEL, INC.

By: _____

Benjamin R. Powel
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(Certificate of Service Omitted in Printing)

IN THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

(Title Omitted in Printing)

DEFENDANT'S, THE SANTA FE TRAIL TRANSPORTATION COMPANY'S, BRIEF IN SUPPORT OF ITS MOTION TO DISMISS

TO THE HONORABLE COURT:

Defendant, THE SANTA FE TRAIL TRANSPORTATION COMPANY, hereinafter referred to as "Employer", seeks an Order from this Court for the dismissal of all or part of respective plaintiffs' case against the Employer on the grounds that the Plaintiffs' Complaint does not state a proper class action under FRCP Rule 23, that this Court has no jurisdiction of plaintiffs' claim by reason of plaintiffs' failure to comply with 42 U.S.C. 2000e-5(d), and that plaintiffs, not being within a class protected by 42 U.S.C. Sec. 1981, the Court has no jurisdiction under that provision.

I.

PREREQUISITES TO A CLASS ACTION UNDER RULE 23 ARE NOT PRESENT AND CLASS ACTION SHOULD BE DISMISSED.

Plaintiffs' Complaint fails to set forth the four (4) prerequisites of a class action set forth in Rule 23a. Plaintiffs complain of one isolated action, wherein plaintiffs con-

clude that, because the white plaintiffs were discharged and one negro employee not discharged, different discriminatory discipline was imposed upon the white plaintiffs, because of their race. The Complaint does contain sweeping, unspecified allegations of discrimination, but fails to show a defined class and fails to show that members of any such alleged class are so numerous as to make it impractical to bring them before the Court.

Plaintiffs' Complaint does not set forth a claim typical of alleged claims of the affected class. Plaintiff McDonald was, at the time in question, a Driver and an employee protected by Collective Bargaining Agreement, with the right to assert a Grievance for discharge, to be processed by the defendant Local Union. On the other hand, plaintiff Laird was a Dock Foreman and Supervisor, not within the appropriate unit for bargaining or within the Contract covering employees similarly employed as plaintiff McDonald.

The questions of law and/or fact peculiar to the plaintiffs herein are not shown by the Complaint to be common to questions of law and/or fact which might arise or which might be proved under the broad, unspecified allegations of discrimination of the affected class, which might be raised on trial.

Plaintiffs cannot be said to be representative parties who will fairly and adequately protect the interests of the affected class. Plaintiff McDonald is of a class who had the opportunity to elect to pursue his contractual remedies through grievance procedure and arbitration, whereas plaintiff Laird, being a Docket Foreman and not afforded such contractural relief, is dissimilarly situated.

II.

TITLE VII ALLEGATION AS TO DEFENDANT SANTA FE TRAIL TRANSPORTATION COMPANY SHOULD BE DISMISSED.

The filing by plaintiffs of a written Charge with the Equal Employment Opportunity Commission within the ninety (90) day limitation period set forth in 42 U.S.C. Sec. 2000e-5(d), is a condition precedent and a jurisdictional prerequisite to plaintiffs' institution of this suit against this defendant in the District Court. *Choate v. Caterpillar Tractor Co.*, 402 F.2d 357 (C.A. 7th); *Fore v. Southern Bell Telephone & Telegraph Co.*, 293 F. Supp. 587; *Banks v. Local Union 136, International Brotherhood of Electrical Workers*, 296 F. Supp 1188; *Cox v. U.S. Gypsum Co.*, 284 F. Supp 74; and *Boudreaux v. Baton Rouge Marine Contracting Co.*, 304 F. Supp 240. Plaintiff Laird is believed to have never filed a written Complaint with the Commission. Even if McDonald's written Complaint filed with the Commission is sufficient to encompass and include plaintiff Laird, plaintiff Laird, being a member of the supervisory force of the defendant-Employer, was not within the coverage of the Collective Bargaining Agreement between defendants, Union and Employer, and, having filed no contractual Grievance or proceeded under any Collective Bargaining Agreement, has no excuse for such late filing. It is admitted that the ninety (90) day time limitation may be tolled by the processing of contractual Grievances under authority of *Culpepper v. Reynolds Metal Co.*, 421 F.2d 888 (5th Cir. 1970), but such tolling of the ninety (90) day filing prerequisite is not applicable to plaintiff Laird.

Even if the ninety (90)day filing prerequisite be tolled as to plaintiff McDonald, plaintiff McDonald's Grievance,

processed through the grievance and arbitration proceeding to binding arbitration between the Union and the Employer, was concluded in October, 1970, after which time more than ninety (90) days expired prior to McDonald's filing his written Complaint with the Equal Employment Opportunity Commission on April 7, 1971. Although the timely filing of a Grievance by a suspended employee is provided for in the Collective Bargaining Agreement between the Union and Employer, the subsequent processing of the Grievance tolls the time limitation and the limitation period then begins to run the day the arbitrators hand down their final decision, which terminates the formal Grievance procedure available under the Collective Bargaining Agreement. *Phillips v. Columbia Gas of W. Va., Inc.*, 347 F. Supp 533 (1972). Nor can a Complaint alleging a single act of discrimination or reason of wrongful discharge by reason of race be considered a continuing violation. *Phillips v. Columbia Gas of W. Va., Inc.*, supra.

III.

CLAIM UNDER SECTION 1981 SHOULD BE DISMISSED.

The Complaint shows that plaintiffs are white plaintiffs, alleging job discrimination.

Section 1981, however, provides that all persons within the United States shall have the same rights as "is enjoyed by white citizens, and shall be subject to like punishment, payments, penalties, taxes, licenses and exactations of every kind, and no other". Section 1981 has its genesis in the Civil Rights Act of 1866. The Act was directed with particularity toward the rights of black people and

to guaranty them equal rights to all citizens, regardless of race or previous condition of servitude. The Courts have construed this Act to apply to blacks asserting job discrimination and employment, based upon race. *Dobbs House, Inc. v. Sanders,* 431 F.2d 1097 (5th Cir.), cert. den'd., 401 U.S. 948, 28 L.Ed.2d 231.

However, the undersigned has been unable to locate a case in which white persons successfully asserted that they were a class within the protection of the Civil Rights Act of 1866. This defendant believes and would urge the Court that there are no such reported cases because the Act was not intended to protect whites, unless possibly such whites were of a particular group or class of whites, either by ethnic or religious differences, in which event conceivably the Act could be said to apply. However, no such particular class of white persons are alleged by plaintiffs nor are plaintiffs shown to be within any such particular class of white persons.

Plaintiffs similarly situated to the white plaintiffs in this case are afforded ample protection and an entirely suitable remedy to pursue any claims of discrimination under the provisions of Title VII, and neither equitable nor moral grounds exist to construe the Civil Rights Act of 1866 beyond its plain language to apply to plaintiffs in this case.

To so hold would clearly give plaintiffs such as those situated in this litigation carte blanche authority to simply ignore the procedural requirements set forth in the Civil Rights Act of 1964 and enable white plaintiffs to merely by-pass, for whatever reason, the Equal Employment Opportunity Commission and the safeguards and remedies afforded under Title VII.

WHEREFORE, premises considered, defendant, The Santa Fe Trail Transportation Company, prays that its Motion to Dismiss be granted, and that it go hence without day.

Respectfully submitted,

McLEOD, ALEXANDER,
POWEL & APFFEL, INC.

By: _____

Benjamin R. Powel
Attorney in Charge
808 Sealy & Smith Prof. Bldg.
P. O. Box 629,
Galveston, Texas 77550
Tele. No. AC-713, 763-2481

(Certificate of Service Omitted in Printing)

IN THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

(Title Omitted in Printing)

DEFENDANT'S, SANTA FE TRAIL TRANSPORTATION COMPANY'S, SUPPLEMENTAL BRIEF IN SUPPORT OF ITS MOTION TO DISMISS

TO THE HONORABLE COURT:

Defendant, THE SANTA FE TRAIL TRANSPORTATION COMPANY, makes and files this Supplemental Brief, in support of its Motion to Dismiss, and, particularly, to that part of the Motion urging dismissal of plaintiffs' claim under 42 USC Sec. 1981, the Civil Rights Act of 1866, and would show the Court as follows:

I.

In Paragraph III of this Defendant's Brief in Support of its Motion to Dismiss, the undersigned advised the Court that he had been unable to locate a case in which white persons successfully asserted that they were a class within the protection of the Civil Rights Act of 1866. However, attached hereto, and marked Exhibit A and by reference thereto incorporated herein, are the Findings of Fact and Conclusions of Law in Civil Action No. 72-235, styled "Paul D. Barbour, et al vs. Railway Express Agency, et al", in the United States District Court for the Northern District of Alabama, Southern Division, in which said Court squarely held that white persons cannot claim the protection of Sec. 1981 of 42 USC.

So far as is known to the undersigned, this is the only case on the question and same squarely supports this Defendant's Motion to Dismiss.

Respectfully submitted,

McLEOD, ALEXANDER,
POWEL & APFFEL, INC.

By: _____

Benjamin R. Powel
Attorney in Charge
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Attorneys for Defendant, The Santa Fe Trail Transportation Company

(Certificate of Service Omitted in Printing)

EXHIBIT A

IN THE
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

CIVIL ACTION NO. 72-235

PAUL D. BARBOUR, ET AL,
Plaintiffs,

v.

RAILWAY EXPRESS AGENCY, ET AL,
Defendants.

* * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

* * *

HONORABLE SAM C. POINTER, JR.: The Court will now enter its findings of fact and conclusions of law into the record. These are based on the testimony that has been presented in open Court through witnesses together with the documentary evidence that has been offered and received into evidence. This documentary evidence consists in part of interrogatories to the corporate defendant and its answers thereto, and certain requests for admissions of the corporate defendant and its responses thereto. This case has been brought by three white employees of REA under Title VII of the Civil Rights Act. Initially the action was brought also under Section 1981 of Title 42, United States Code, but the Court previously indicated its conclusion that that section could not be

utilized by white persons. Title VII, however, is available not only for blacks who have been discriminated against in their employment, but also in favor of whites who have been discriminated against because of race in their employment. The case is brought against REA Express, Inc., the employer, and against the union which I have previously described in detail, which need not be repeated here, as to its formal title. There are admissions by pleadings that the company and the union do constitute an employer and labor organization within the province of Title VII. This case presents an unusual situation, and I would have to say a rather difficult one for the Court. It is a close question, as I view it. In the 1930's, 1940's, the company and the union had a collective bargaining agreement covering various terminals of the company around the country. These provided for seniority rights in classified jobs for employees, based upon the date that employee successfully bid upon a permanent vacancy or a permanent job. By practice and custom in the South, at least in Birmingham, Alabama, terminal, black employees of REA were not permitted to hold or bid on these jobs back in the thirties and forties and fifties. There was instead a particular job of freight handler which black employees filled. That job, contrary to the collective bargaining agreement, was not posted or in the terminology in this case bulletined as a filling of a permanent vacancy. Instead black employees would simply work that position without gaining any seniority and having only a type of seniority, one as against another, by virtue of the respective dates of their first hire by the company. The other jobs of the company were handled on a bulletined basis or bid basis with employees if not filled by other employees already having permanent jobs bidding on those positions in accordance with their original hire date. If successful

in the bid, then they would obtain a seniority date equal to the award date essentially of their successful bid. The job received for black employees, the Court finds from the evidence to have been less desirable in terms of pay and involving to some degree additional physical efforts over and above those required in the white jobs. In short, the job of freight handler must be considered by the Court as a less desirable position in the employment of the company. This system continued at the Birmingham terminal until 1955 where following the lead made at two other terminals of defendant in the southeastern United States and following the results of litigation that reached the Fifth Circuit for which certiorari was even requested of the Supreme Court, there was a change made in the system in that now blacks were permitted to hold regular or permanent positions and to bid upon those and there became necessary for a decision to be made as to what senority date these black employees would be given insofar as their future service with the company was concerned. The decision was made between the company and the union after negotiations that a date be arrived at for black employees which roughly approximated the estimated date that these black employees would have been awarded the job of freight handler, had that job in the previous years been treated as a regular position. The basis for doing this was to first ascertain when the black employees had been regularly employed by the company. The standard used was that of looking at a sixty calendar day period, and if the black employee had in effect been working full time which apparently was something on the order of six days a week of normal number of hours a day for that approximately two month period of time, then it was assumed, for purposes of this analysis, this retrospective analysis, that the employee had been permanently

employed, and that there was a permanent position opened back at that time. There then was added as to all but two employees a fifteen day period, that being the period that would have elapsed had the collective bargaining agreement provision been followed and the bids process followed. This then was placed as a seniority—a recalculated senority date for these black employees. For the most part dates calculated in this manner for the black employees were earlier than the actual seniority dates which white employees who had been hired initially by the company at the same time had in fact been obtained under the contract. The situation of the individual plaintiffs in this case is relatively typical for other white employees similarly situated in that a period of some four years elapsed for two of the plaintiffs before they were able to successfully bid a permanent job from the date of their original employment, and for another only a period of one year was required. Of course, these are subject to fluctuations depending upon the particular circumstances, the time the employee was hired, and the subsequent vacancies and business terms. The white employees made complaints following the 1955 consolidation in opening of jobs to blacks, that they were being unfairly treated in that blacks now were obtaining seniority dates ahead of them when they had first been hired earlier than comparable blacks. This dispute simmered over a number of years, was not corrected in the bargaining process. It finally found its way into the federal court here via Title VII which provides for equal employment opportunities for white and black. The complaint was made to the EEOC by the named plaintiffs. There was no resolution of the complaint satisfactory to the named plaintiffs, and following that report the plaintiffs brought this instant

action under Title VII. Title VII involves essentially two types of protection. Stated another way it may be violated in either of two ways in the typical case. No. One, there may be employment practice that discriminates against someone actively on the basis of his race, color and the like. Secondly, an employee practice though neutral on its face may nevertheless taken in conjunction with past circumstances be found to be perpetuating the effect of some past discrimination that took place prior to July, 1965, the effective date of the Civil Rights Act. This Court must look at both aspects of Title VII in the present case. I first turn to the question of whether there is some employment practice that perpetuates the effects of past discrimination, that is, pre-1965 discrimination. It stands without significant dispute that there was discrimination in the past during the time when there were white jobs and black jobs. The question is, do the practices now in force perpetuate the effects of that past discrimination which in and of itself was rectified in 1955. The plaintiffs ask that this Court rule that they were discriminated against back in the thirties and forties in that they were unable to obtain the handler of the unloader jobs and were accordingly unable to get some work when there were blacks getting work. The Court, however, has already concluded that this particular job, the black job was less desirable or inferior to the jobs that were reserved solely for whites. Was there discrimination in the past? One interpretation of discrimination is any different treatment. I do not believe that that is the essence of Title VII. I do not believe one can complain under Title VII of discrimination unless it is discrimination adverse to himself. I do not believe he can complain as to discrimination that is favorable to himself. While there may have been some negative features of the pre-

1955 system as relates to whites, I find that those who were discriminated against prior to '55 were blacks and not whites, and accordingly at this stage in time there is nothing which these plaintiffs or their class can complain of that some past discrimination against them is being perpetuated. But now I turn to the question whether the present system presently discriminates against them. A review of the 1972 senority roster, paying attention to those employees who were hired in 1942, leads to this conclusion. If the service date or the first hire date were utilized for seniority purposes, blacks hired during that period of time and still shown on the roster of '72 would in each instance lose a relative position on their senority roster from a minimum of four places to a maximum of fifteen places with most of them losing in the ten to fifteen place range. At the same time whites, for the most part, would have gained places as the blacks dropped back. The result is that the failure to use a first hired date statistically favors black employees in this period. Stated another way, the use of the service date or first hired date to determine seniority would statistically favor whites as compared with our present system. Another way of viewing that is to say that the present system which attempts to use a permanent job time basis statstically favors black employees and statistically discriminates against white employees. That which the plaintiffs would have this Court order would discriminate statistically in the same way that that which they complain about discriminates statistically against the other race. The Court cannot draw a conclusion based on statistics of this sort because either method statistically will show a discrimination. Is there and has there been an attempt or an intent to discriminate based on color? I find and conclude that what the company and union did in 1955 was to attempt

to find a basis on which to treat whites and blacks equally by coming to a basis of when was their permanent job obtained. There is nothing sacred or magic about using a first hire or first pay rather than a first permanent job as the basis on which to measure seniority. One has as much value as the other in a theatrical sense. If there is—have been errors in the application of that, the errors are unintentional or have been unintentional and are not shown to be racially significant. It is possible that there are some blacks on the seniority list who have been given seniority dates at their estimated permanent job date, which is earlier or later than in fact what—when they would have gotten their permanent job had the collective bargaining agreement been honored in the thirties and forties. Likewise it's possible that white employees who had four years to wait before getting a permanent job may have been passed over, that is, may have failed to bid on a job as soon as they possibly could have, may have been out of town when some vacancy was posted. It's possible that some of them may have worked sixty days or over a sixty day period, five days or six days a week, eight hours a day. There is no indication from this evidence that that has happened, but I cannot say that it didn't happen either. But I find that neither the company nor the union intended such results, and that the system arrived at was intended to place all on the same basis. I find no hint that if this had been unfairly done and in an individual case back in 1955 that the local lodge which at that time was segregated would have refused to file a grievance on behalf of that individual who thought he had been denied his appropriate permanent job date. It's a very close question, as I have indicated. I nevertheless conclude and find that there has not been discrimination by the company and union in

this case, and that judgment accordingly should be rendered for the defendants in the case. That is the decision of the Court.

* * *

CERTIFICATE

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, Thomas E. Dempsey, Official Court Reporter of the United States District Court, Birmingham, Alabama, do hereby certify that I reported in stenotypy the foregoing Findings of Fact and Conclusions of Law; that I later reduced my stenotypy notes to typewriting under my supervision, and the foregoing pages contain a full, true and correct transcript of the proceedings as herein set out.

I further certify that I am neither of counsel nor of kin to any parties to said cause, nor in any manner interested in the result thereof.

_____
Official Court Reporter

IN THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

(Title Omitted in Printing)

PLAINTIFF'S MOTION AND MEMORANDUM IN OPPOSITION TO DEFENDANT'S SANTA FE TRAIL TRANSPORTATION COMPANY'S MOTION TO DISMISS AND BRIEF IN SUPPORT

TO THE HONORABLE COURT:

COMES NOW, your Plaintiffs, L. N. McDonald and Raymond Laird and file this their Motion and Memorandum In opposition to DEFENDANT SANTA FE TRAIL TRANSPORTATION COMPANY'S MOTION TO DISMISS, previously filed herein and, who would respectfully show the Court the following, to-wit:

I.

JURISDICTIONAL BASIS FOR BRINGING SUIT.

Plaintiffs filed this suit pursuant to Rule 23 (b) of the Federal Rules Of Civil Procedure; 28 U.S.C.; sec. 1343 (4): 42 U.S.C. 2000e, et. seq.; 28 U.S.C. sec. 2201 and 2202 and 42 U.S.C. 1981, providing for the equal rights of all persons in every state and territory within the jurisdiction of the United States. Further jurisdiction is invoked pursuant to 29 U.S.C., secs. 151, et seq., based on fair representation owed to Plaintiffs and the class they represents.

II.

PREREQUISITES TO BRINGING A CLASS ACTION UNDER RULE 23(b).

Title VII of the Civil Rights Act of 1964, as amended, specifically provides for the bringing of suits as a class action, under Rule 23(b) of the Federal Rules Of Civil Procedure. Since, under Title VII, discrimination is by definition class discrimination. Parham v. Southwestern Bell Telephone Company, 433 F.2d 421 (C.A.-8; 1970).

The purpose of a class action or suits, is to enable the Courts to determine finally the rights of a numerous class of individuals by one common final judgment, rendering separate actions unnecessary. *Kainz v. Anheuser-Busch*, Inc., 194 F.2d 737.9

Subdivision (a) of Rule 23 provides that one or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will adequately protect the interests of the class.

Subdivision (b) provides that an action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied and in addition:

(A) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or

(B) adjudications with respect to individual members of the class. . .

(2) the party has acted or refused to act on grounds generally applicable to the class. . . .

Being in the nature of an action in equity, as opposed to an action in law, it is necessary to give a liberal construction of Rule 23, *See Weeks v. Bareco Oil Company*, 125 F.2d 84. The Rule is procedural, not a limitation on the Court's jurisdiction. *Harris v. Palm Springs Alpine Estates, Inc.*, 329 F.2d 909.

In disposing of the Motion to Dismiss in Parham v. Southwestern Bell Telephone Company the Court pointed out that, "In passing upon the motion the Court is required to view the case in the light most favorable to the Plaintiff, and the motion must be denied unless the Court is convinced beyond a reasonable doubt that the case does not present a genuine issue as to a material fact and that defendant is entitled to a judgment as a matter of law." Citing Rule 56, Federal Rules of Civil Procedure, 28 U.S.C.A.

Plaintiffs seek relief not only for the class, but individually, as well, therefore "It is clear, then, that to dismiss summarily the injunction and class action aspects of the case would be but a partial disposition of the matter and would be of little real benefit to the defendant, certainly it would not save the Court much, if anything, in the way of time or judicial effort.

In such circumstances summary judgment is simply not appropriate. . . . *Parham v. Southwestern Bell Telephone Co.*, 433 F.2d 421, C.A.-8; 1970).

III.

The only jurisdictional requirement necessary and mandatory on Plaintiff is that he be issued a "RIGHT TO SUE LETTER" by the Commission and that Plaintiff institute suit within the period proscribed by law. The suit must be filed within 30-days of receipt of the right to sue letter. Plaintiffs filed suit within 30 days after receipt of the "30 Day Letter."

IV.

CONCLUSION.

Plaintiffs moves the Court for an Order dismissing the Defendant's Motion to Dismiss and that this matter now pending before this Honorable Court be in all things expedited.

WHEREFORE PREMISES CONSIDERED, Plaintiffs L. N. McDonald and Raymond Laird, respectfully moves the Court to dismiss Defendant's Motion to Dismiss.

By: JAMES BULLOCK
James Bullock
Attorney at Law
4719 Dowling Street
Houston, Texas 77004
(713) 528-4949
Attorney for Plaintiffs

(Certificate of Service Omitted in Printing)

IN THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CIVIL ACTION NO. 71-H-891

L. N. McDONALD & RAYMOND LAIRD,
Plaintiffs,

v.

THE SANTA FE TRAIL TRANSPORTATION CO.
& INTERNATIONAL BROTHERHOOD OF
TEAMSTERS LOCAL NO. 988,
Defendants.

James Bullock, Houston, Texas,
for plaintiffs.

Robert W. Alexander, McLeod, Alexander,
Powel & Apffel, Galveston, Texas,
for defendant The Santa Fe Trail
Transportation Co.

James P. Wolf, Dixie, Wolf & Hall
Houston, Texas, for defendant
International Brotherhood of
Teamsters Local No. 988.

MEMORANDUM AND ORDER

The plaintiffs, both Caucasian, allege that they and a Negro were charged jointly and severally with misappropriating company property for which the plaintiffs were discharged but the Negro employee was not. It is alleged that the discharges were for racially discriminatory reasons. Defendant Santa Fe Trail Transportation Company (Santa Fe), the employer, and defendant Teamsters Local Union No. 988, of which only plaintiff McDonald is a member, have raised a variety of apparently valid defenses to federal jurisdiction based upon Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.* However, jurisdiction based upon the Civil Rights Act of 1866, 42 U.S.C. § 1981, if proper, would bypass those defenses.

Defendant Santa Fe cites only *Barbour v. Railway Express Agency*, ____ F. Supp. ____ (Civil Action No. 72-235, N.D. Ala., filed Nov. 16, 1973) for the proposition that white persons may not bring an action under § 1981. The plaintiffs oppose the motion to dismiss without citing authority. Without conducting a thorough search, this Court has noted several cases in which jurisdiction was held to be proper. *Walker v. Pointer*, 304 F. Supp. 56 (N.D. Tex. 1969) [§ 1982];*Gannon v. Action*, 303 F. Supp. 1240 (E.D. Mo. 1969), *modified on appeal*, 450 F.2d 1227 (8th Cir. 1971); *Central Presbyterian Church v. Black Liberation Front*, 303 F. Supp. 894 (E.D. Mo. 1969). The U.S. Supreme Court has held that white persons have standing to sue under § 810(d) of the Civil Rights Act of 1968, 42 U.S.C. § 3610(d), although expressly reserving the question of standing under § 1982, also a provision of the Civil Rights Act of 1866. *Trafficante v. Metropolitan Life Insurance Co.*, 409 U.S. 205, 34 L.Ed.2d 415, 419 § n. 8, 93 S.Ct. 364 (1972). Because this point has received inadequate briefing by the parties, the motions to dismiss for lack of jurisdiction will be denied at this time. They may be reurged during or following a trial on the merits, thus allowing additional time for suitable briefing.

This Court is also concerned with whether the complaint states a claim upon which relief can be granted. Assuming, but not deciding, that the plaintiffs were discharged following their apprehension for the theft of their employer's property, this Court questions the validity of any challenge to a discharge properly brought. *See McDonnell Douglas Corp. v. Green,* 411 U.S. 792, 36 L.Ed. 2d 688, 93 S.Ct. 1817 (1973). Assuming, arguendo, that the plaintiffs were discharged because they were white while an equally guilty Negro employee was retained because of his race, this Court still questions whether the plaintiffs have stated a claim. (This Court assumes for present purposes that the Negro employee had a similar work record and similar degree of culpability in the offense.) This point has received inadequate attention in the pleadings filed by the parties and has not been briefed.

For the above reasons, the motions to dismiss must be denied at this time. This case will proceed to trial before the Honorable Peter T. Fay upon the assumption that jurisdiction lies; if the facts indicate no cause of action should lie, the case may be dismissed and the issue of jurisdiction will become moot. If the facts suggest that relief is warranted, then the Court may determine whether it has jurisdiction to award such relief.

DONE at Houston, Texas, this 4th day of January, 1974.

/s/ CARL O. BUE, JR.
Carl O. Bue, Jr.
United States District Judge

IN THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

(Title Omitted in Printing)

DEFENDANT'S, SANTA FE TRAIL TRANSPORTATION COMPANY'S, SECOND MOTION TO DISMISS

TO THE HONORABLE COURT:

Comes now THE SANTA FE TRAIL TRANSPORTATION COMPANY, one of the Defendants in the above entitled and numbered cause, and makes and files this its Second Motion to Dismiss respective Plaintiffs' above entitled action against Defendant, THE SANTA FE TRAIL TRANSPORTATION COMPANY and as grounds therefor, would respectfully show the Court as follows:

I.

This Defendant has heretofore filed a Motion to Dismiss, which is by reference thereto incorporated herein for all purposes.

II.

In response to such Motion to Dismiss, the Court entered its Memorandum and Order dated January 4, 1974 which appeared to acknowledged the validity of defenses of federal jurisdiction based upon Title VII of the Civil Rights Act of 1964, but not granting the Motion because of the Court's feeling that additional briefing should be

required before the Court rules on whether or not it has jurisdiction under the cause of action alleged by the white Plaintiffs under 42 U.S.C. Section 1981.

III.

Since the Court's Memorandum and Order, Defendant has become aware of rather definitive cases on the question of the application of 42 U.S.C. Section 1981 to white Plaintiffs, therefore files herewith its Supplemental Memorandum of Authorities, and re-urges its Motion that Plaintiffs' action against this Defendant be dismissed for want of jurisdiction and this Defendant go hence without delay.

McLEOD, ALEXANDER,
POWEL & APFFEL, INC.

By: _____
Benjamin R. Powel
Attorney in Charge
808 Sealy & Smith Prof. Bldg.
P. O. Box 629,
Galveston, Texas 77550
Tele. No. AC-713, 763-2481
Attorneys for Defendant,
The Santa Fe Trail Transportation Company

NOTICE OF MOTION

TO: MR. JAMES BULLOCK, 4719 Dowling Street, Houston, Texas 77004, Attorney for Plaintiffs; and MR. JAMES P. WOLF, Dixie, Wolf & Hall, Suite 401, 609 Fannin Street, Houston, Texas 77002, Attorneys for Defendant, Local Union No. 988:

Please take notice that the undersigned will bring the above and foregoing Motion on for hearing on Monday, April 29, 1974, or as soon thereafter as counsel may be heard.

McLEOD, ALEXANDER,
POWEL & APFFEL, INC.

By: _____
Benjamin R. Powel
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Galveston, Texas 77550
Tele. No. AC-713, 763-2481

(Certificate of Service Omitted in Printing)

IN THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DISTRICT

(Title Omitted in Printing)

DEFENDANT'S, SANTA FE TRAIL TRANSPORTATION COMPANY'S, SECOND SUPPLEMENTAL BRIEF IN SUPPORT OF ITS MOTION TO DISMISS

TO THE HONORABLE COURT:

Defendant, THE SANTA FE TRAIL TRANSPORTATION COMPANY, makes and files this its Second Supplemental Brief, in support of its Motion to Dismiss, and particularly, to that part of the Motion urging dismissal of Plaintiffs' claim under 42 U.S.C. Section 1981, the Civil Rights Act of 1866, and would show the Court as follows:

I.

Defendant would by reference thereto incorporate herein Defendant's Brief in Support of its Motion to Dismiss and Supplemental Brief in Support of its Motion to Dismiss heretofore filed herein.

II.

Since the Court's entry of its Memorandum and Order on January 4, 1974, Defendant has done additional briefing, and feels the substance of the cases cited hereafter warrant the Court's again considering its Motion to Dismiss.

III.

Defendant has heretofore pointed out to the Court the decision in *Paul D. Barbour, et al v. Railway Express Agency, et al.*

IV.

The United States Supreme Court in *Trafficante v. Metropolitan Life Insurance Company*, 409 U.S. 205, 34 L.Ed.2d 415 (1972), although having an opportunity to speak on whether or not white persons have standing to sue under 42 U.S.C. Section 1981, expressly reserved the question. The only Court of Appeals' opinion found by the undersigned squarely in point is *Perkins v. Banster*, 190 F. Supp. 98 (D.C., Maryland, 1960), affirmed in 285 Fed. 2d 426 (4th Cir., 1960). That Court stated, "Section 1981 is the equal rights section given to non-white persons the same rights which are enjoyed by white persons. Since the Plaintiff . . . is a white person, Section 1981 serves as no basis for jurisdiction in this case." 190 F. Supp. 99.

V.

Two recent District Court decisions rather well consider the precise question in point here. The Court in Ripp v. Dobbs House, Inc. 366 F. Supp. 205 (D.C., Alabama, 1973) considered a civil rights action filed by a white plaintiff under Title VII and 42 U.S.C. Section 1981 complaining of an illegal discharge by his employer by reason of his association and social attitudes toward his fellow employees who were members of the black race and further alleging that the employer maintained employment practices and policies which operated to discriminate against the employment opportunities of blacks.

With regard to the application of Section 1981, the Court on Page 211 said:

> "The Plaintiff seeks to utilize this statute, which is not available to "white citizens", to support this Court's jurisdiction to hear his freedom of association claims. The Court will decline Plaintiff's invitation to extend this statute beyond its reach. Even in its resurrected state, Civil Rights Act of 1866 has been generally limited to its unequivocal terms (citing *Perkins v. Banster,* supra).
>
> "Attempts to expand Section 1981 beyond its terms are generally met with failure. (See cases cited). In summary, the Court concludes that a white plaintiff cannot rely upon 42 U.S.C. Section 1981 to press claims with respect to his private employment."

VI.

The United States District Court for the Northern District of California in *Van Hoomissen v. EEOC, Intervenors v. Xerox Corporation* 368 F. Supp. 829 (1973) rather extensively considers the standing of a white plaintiff to sue his employer under Section 1981. The Court points out that in certain instances whites have been permitted to bring action under Sections 1981 and 1982, but further points out that all of such causes of action were based upon infringement upon the white plaintiff's property rights. The Court at Page 839 further on the basis of private job discrimination states:

> "The Ninth Circuit in *Trafficante v. Metropolitan Life Insurance Co.,* 446 F.2d 1158 (9th Cir. 1971) approved this line of cases by positing a general thesis that, when a white person suffers some "racially motivated interference with his property rights", he has standing to sue under Section 1982. When the *Trafficante* decision was appealed to the Supreme

> Court, the Court in a footnote expressly reserved any ruling on the question of standing under Section 1982 (409 U.S. 205, at 209, n. 8, 93 S.Ct. 364, 34 L.Ed. 415 at 419, n. 8 (1973).
>
> If a white person has standing to sue under Section 1982 when he suffers interference to his property rights due to racially motivated conduct (the Trafficante formula), should that right be expanded to include the companion statute, Section 1981, when a plaintiff suffers a direct injury to his employment as a result of racially motivated conduct? Most Courts have refused to so expand the concept (see text and citations above at page 838 and, as noted above, in the two cases which have allowed white persons standing under 1981, that standing was really predicated upon the interference by defendants with plaintiffs' property rights, not with their employment.
>
> Therefore, as a result of the analysis supra, this Court does not believe it should expand the *Trafficante* formula to allow plaintiff standing under Section 1981. The Supreme Court's refusal to review the *Trafficante* holding on this point indicates to this Court that the matter should be left in status quo until further word from the Supreme Court is heard on this most difficult issue. Thus the Court holds that plaintiff, a white male, has no standing to sue under Section 1981, and that Count Two must be stricken from the complaint."

In *Gannon v. Action,* 303 F. Supp. 1240 (Eastern District, Missouri, 1969) modified on appeal, 450 F.2d 1227 (8th Cir., 1971), the District Court granted members of the congregation of a predominantly white Church an injunction against Black Militants who were disturbing their church service stating:

> "It is clear that (Section 1981 applied) to racial discrimination against all persons regardless of race."

However, on appeal it was held that jurisdiction rested solely upon Section 1985(3). The Court of Appeals specifically declined to determine whether or not it had jurisdiction under Section 1981.

The Plaintiff's action in *Walker v. Pointer,* 304 F. Supp. 56 (Northern District of Texas, 1969) was brought and decided under Section 1982, relating to rights in real property and rentals, and is consistent with other holdings pertaining to the right of white plaintiffs in regard to property rights. Although the Court in *Central Presbyterian Church v. Black Liberation Front,* 303 F. Supp. 894 (Eastern District, Missouri, 1969) in speaking of Sections 1981-1985 indicated its feeling of unfairness to deprive white Americans of the benefit of those Sections, the Court specifically held that Section 1981 applied to white persons who were the victims of racial discrimination against whites insofar as the right to "security of persons and property" (303 F. Supp. 901) were concerned. The Court did not hold that Section 1981 was applicable to whites in area of rights in contract for employment.

McLEOD, ALEXANDER,
POWEL & APFFEL, INC.

By: _____
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(Certificate of Service Omitted in Printing)

IN THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CIVIL ACTION NO. 71-H-891

L. N. McDONALD & RAYMOND LAIRD,
Plaintiffs,

v.

THE SANTA FE TRAIL TRANSPORTATION CO.
& INTERNATIONAL BROTHERHOOD OF
TEAMSTERS LOCAL NO. 988,
Defendants.

(Filed May 2, 1974)

James Bullock, Houston, Texas,
for plaintiffs.

Robert W. Alexander, McLeod, Alexander,
Powel & Apffel, Galveston, Texas,
for defendant The Santa Fe Trail
Transportation Co.

James P. Wolf, Dixie, Wolf & Hall,
Houston, Texas, for defendant
International Brotherhood of
Teamsters Local No. 988.

MEMORANDUM AND OPINION

On January 4, 1974, this Court issued a Memorandum in which it noted an unresolved question regarding the standing of caucasians to bring suit under 42 U.S.C.

§ 1981. Subsequently, defendant Santa Fe Trail Transportation Company has brought to the Court's attention several cases on point, most notably the following: *Van Hoomissen v. Xerox Corp.*, 368 F. Supp. 829 (N.D. Cal. 1973); *Ripp v. Dobbs Houses, Inc.*, 366 F. Supp. 205 (N.D. Ala. 1973). Upon full consideration of the pleadings and authorities cited, it is the opinion of the Court that the better reasoned authorities hold that § 1981 is inapplicable to white persons. *See Van Hoomissen, supra,* 368 F. Supp. at 838-840. Defendant Santa Fe Trail Transportation Company's Motion to Dismiss for lack of jurisdiction under § 1981 is granted.

With regard to plaintiffs' class action allegations, the Court has considered the entire record and particularly plaintiffs' allegations and concludes that the class of white persons who are employed or might be employed by The Santa Fe Trail Transportation Company in Houston, Texas, who are members or might become members of the Local 988, who have been discharged upon charges of misappropriating company property is not so numerous as to make joinder of all such members impracticable. Therefore, the Court concludes that this action may not be maintained as a class action. Fed. R. Civ. P. 23(c)(1).

With regard to plaintiffs' allegations against defendant Local 988, it has been alleged by this defendant, and not denied by the plaintiffs, that charges filed before the EEOC pertained only to the employer, defendant Santa Fe Trail Transportation Company. This Court has previously considered the requirement of exhaustion in Title VII cases with respect to uncharged unions and has concluded that the law requires such exhaustion as a jurisdictional prerequisite to any claim for damages. In limited cases where there is a "critical involvement of the collec-

tive bargaining agreement and its interpretation and application to plaintiffs' allegations", then joinder of a union under Fed. R. Civ. P. 20(a) is proper solely for limited purposes pertaining to that "critical involvement" of the agreement. *See Held v. Missouri Pacific Railroad Co.*, ____ F. Supp. ____ (Civil Action No. 73-H-1053, S.D. Tex., filed April 3, 1974). The record in the present case indicates no proper basis for Title VII jurisdiction over defendant Local 988 and no critcal involvement of the collective bargaining agreement. Therefore, this cause of action is dismissed as to defendant International Brotherhood of Teamsters Local No. 988 for want of jurisdiction.

With regard to defendant Santa Fe Trail Transportation Company's Motion to Dismiss for lack of Title VII jurisdiction, the present record is inadequate for determining whether or not plaintiffs complied with the 90-day jurisdictional requirements of 42 U.S.C. § 2000e-5(d). It is apparently agreed that the plaintiffs were charged with misappropriation on September 26, 1970, were discharged on October 2, 1970, and that charges were filed with the EEOC by plaintiff McDonald, allegedly on behalf of both plaintiffs, on April 26, 1971. Defendant Santa Fe alleges that a grievance filed by plaintiff McDonald with Local 988 on October 2, 1970, the same day as the discharge, reached a conclusion on October 29, 1970, more than 90 days before EEOC charges were filed. If this is true and the plaintiff McDonald had notice, then the Court is without Title VII jurisdiction. However, plaintiffs allege in their Second Amended Complaint that they were notified in writing by Local Union 988 on April 3, 1971, that collective bargaining rights had terminated. It appears to the Court at this stage in the proceedings that the nature

of notice given upon termination of grievance proceedings would govern this Court's jurisdiction; this is a matter which would require an evidentiary hearing.

With regard to defendant Santa Fe's claims that the arbitration award is binding upon the Court, counsel's attention is again directed to this Court's opinion in *Held* wherein it was noted that the law provides that pursuing a remedy under the collective bargaining agreement does not necessarily bar subsequent relief under Title VII. However, if the issues were identical to those before the Court, if the evidence and hearing dealt adequately and fairly with all factual issues, and the arbitrator actually decided the factual issues also pending before the Court, the Court may defer to such award. *See, e.g., Rios v. Reynolds Metals Co.*, 467 F.2d 54 (5th Cir. 1972). The present record is inadequate at present for making such a determination in this case.

With regard to defendant Santa Fe's contentions as to plaintiff Laird, a supervisory employee not within the coverage of the collective bargaining agreement under which plaintiff McDonald processed a grievance, the Court is well aware that supervisory and non-supervisory employees are not treated identically under the Labor Management Relations Act, 29 U.S.C. § 141 *et seq.* However, as the Fifth Circuit Court of Appeals noted in *Rios, supra,* the interests protected by the LMRA and Title VII are not identical. No authority has been cited indicating that under the circumstances here present where plaintiffs Laird and McDonald were discharged for the same reason arising out of the same incident, the processing of a grievance by McDonald would toll the 90-day jurisdictional period only as to himself. In the absence of authority, the Court concludes for present purposes

that jurisdiction over plaintiff Laird is identical to that of plaintiff McDonald.

Finally, the Court has reconsidered its Memorandum and Opinion of January 4, 1974, wherein it stated:

> Assuming, but not deciding, that the plaintiffs were discharged following their apprehension for the theft of their employer's property, this Court questions the validity of any challenge to a discharge properly brought. *See McDonnell Douglas Corp. v. Green,* 411 U.S. 792, 36 L.Ed.2d 688, 678, 93 S.Ct. 1817 (1973).

The pleadings of the plaintiffs do not allege that they were falsely charged with misappropriating company property; the substance of the allegations is that plaintiffs take issue with the fact that they were discharged for such conduct while a similarly charged Negro employee was not discharged. Upon reconsideration, the Court concludes that the dismissal of white employees charged with misappropriating company property while not dismissing a similarly charged Negro employee does not raise a claim upon which Title VII relief may be granted. For these reasons,

IT IS THE OPINION OF THIS COURT that this cause of action should be and hereby is dismissed with prejudice.

DONE at Houston, Texas, this 2nd day of May, 1974.

/s/ CARL O. BUE, JR.
Carl O. Bue, Jr.
United States District Judge

IN THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CIVIL ACTION NO. 71-H-891

L. N. McDONALD & RAYMOND LAIRD,
Plaintiffs,

v.

THE SANTA FE TRAIL TRANSPORTATION CO.
& INTERNATIONAL BROTHERHOOD OF
TEAMSTERS LOCAL NO. 988,
Defendants.

FINAL JUDGMENT

BE IT REMEMBERED that on this date the Court issued a Memorandum and Opinion wherein it concluded that this cause of action should be dismissed for the reasons stated therein.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that this case should be and hereby is dismissed with prejudice.

This is a FINAL JUDGMENT.

The Clerk shall enter this Judgment and provide counsel with true copies.

DONE at Houston, Texas, this 2nd day of May, 1974.

/s/ CARL O. BUE, JR.
Carl O. Bue, Jr.
United States District Judge

IN THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

(Title Omitted in Printing)

COMBINED NOTICE OF AND MOTION TO CORRECT AND CLARIFY MEMORANDUM AND OPINION ACCOMPANYING FINAL JUDGMENT HEREIN OF MAY 2, 1974

TO: MR. JAMES BULLOCK, Attorney for the Plaintiffs
4719 Dowling Street
Houston, Texas 77004.

PLEASE TAKE NOTICE that the undersigned will move this Honorable Court at the Courtroom in the Federal Building at 515 Rusk Avenue, Houston, Texas, on the 27th day of May, 1974, at 10 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard for an Order correcting and clarifying a certain portion of the Memorandum and Order entered by the Court on May 2, 1974, on the grounds hereinafter set out.

Defendant Union will seek such Order from the Court on the basis:

1. Paragraph 3 of the Court's Memorandum and Opinion being the second paragraph on page 2 of said Memorandum and Opinion, finds on the basis of the pleadings before the Court that the Plaintiffs herein failed to file charges with the EEOC against Defendant Union and their Title VII cause of action was dismissed for want of jurisdiction.

2. These findings were based upon allegations by Defendant Union which were unchallenged by Plaintiffs; however, the facts are incorrect as to Plaintiff L. N. McDonald. Upon rechecking with the Equal Employment Opportunity Commission office in Houston, Texas, it has been determined that a charge against Local Union No. 988 was filed by L. N. McDonald on the 26th day of April, 1971, the same day on which he filed a charge against the Company. No charge was filed by Raymond Laird against the Union. A copy of McDonald's charge is attached to this Motion as EXHIBIT A. The undersigned certifies to the Court that this copy of the affidavit was received from the Equal Employment Opportunity Commission under the representation that it was the only charge which Plaintiff had filed against Local Union No. 988 in this matter.

3. With regard to Plaintiff McDonald's allegations against Defendant Local No. 988, the fourth paragraph of the Court's Memorandum and Opinion, being the last paragraph on page 2 dismisses Plaintiff's Title VII law suit against Defendat Santa Fe because the Plaintiff's failure to comply with the ninety (90) day jurisdictional requirement of 42 U.S.C. § 2000e-5(d). Since it is apparent that the same jurisdictional requirements apply to both Defendant Employer and Defendant Union and the charges against each by McDonald were filed on April 26, 1971, this paragraph should be amended to include Defendant Local Union with Defendant Santa Fe Trail Transportation insofar as the dismissal of Plaintiff McDonald's Title VII allegations.

4. At the time of the filing of Defendant Local No. 988's Answer, Defendant Union had been informed by the EEOC that no charges had been filed against it by

either Plaintiff Laird or McDonald. The charge of McDonald was discovered only upon re-inquiry subsequent to further discussion on this point with Plaintiffs' attorney.

WHEREFORE, premises considered, Defendants move the Court for an order amending its Memorandum and Opinion of May 2, 1974, as set forth above.

Respectfully submitted,

/s/ JAMES P. WOLF
James P. Wolf
Attorney in Charge

OF COUNSEL

DIXIE, WOLF & HALL
Suite 401, 609 Fannin Street
Houston, Texas 77002
713/223-4444
Attorneys for Defendant
Local Union No. 988

(Certificate of Service Omitted in Printing)

CHARGE OF DISCRIMINATION

(If you have a complaint, fill in this form and mail it to the Equal Employment Opportunity Commission's Regional Office in your area. In most cases, a charge must be filed with the EEOC within a specified time after the discriminatory act took place. IT IS THEREFORE IMPORTANT TO FILE YOUR CHARGE AS SOON AS POSSIBLE.

This form is to be used only to file a charge of discrimination based on RACE, COLOR, RELIGION, SEX, or NATIONAL ORIGIN.

(PLEASE PRINT OR TYPE)

Case File No. TCHE-1921

SS# 424-28-7473

1 Your Name (Mr., Mrs., Miss) (indicate) L.N. MCDONALD Phone Number 923-5453

Street Address 301 BRYAN

City HOUSTON State TEX. Zip Code 77011

2 WAS THE DISCRIMINATION BECAUSE OF: (Please check one)

Race or Color ☒ Religious Creed ☐ National Origin ☐ Sex ☐ CAUCASIAN

3 Who discriminated against you? Give the name and address of the employer, labor organization, employment agency and/or apprenticeship committee. If more than one, list all.

Name International Brotherhood of Teamsters Local No. 988

Street address 626 E. 4½ Street PH: 713/869-4826

City Houston State Tex. Zip Code 77007

AND (other parties if any)

4 Have you filed this charge with a state or local government agency? Yes ☐ When ____ (MONTH) ____ (DAY) ____ (YEAR) No ☐

5 If your charge is against a company or a union, how many employees or members? Under 25 ☐ Over 25 ☒

6 The most recent date on which this discrimination took place: Month April . Day 7 Year 1971

7 Explain what unfair thing was done to you. How were other persons treated differently? (Use extra sheet if necessary.)

I believe that the International Brotherhood of Teamsters Local No. 988 discriminated against me because of my race Anglo-Caucasian by failing to represent me properly,and diligently process my grievance filed with th Union on or about September 26, 1970. During all of this period I made diligent efforts to find the disposition of my grievance. On April 3, 1971, I was informed by my union President that the Union will not proceed to arbitration with my grievance.

8 I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

Date 4-26-71 L N McDonald (Sign your name)

Subscribed and sworn to before me this 26th day of April, 1971

Leon Mills Equal Employment Officer (Name) (Title)

If it is difficult for you to get a Notary Public to sign this, sign your own name and mail to the Regional Office. The Commission will help you to get the form sworn to.

FORM APP.: BUR. OF BUDGET—No. 124-R0031 FORM EEOC-5 (REV. 7-63)

EXHIBIT A

IN THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CIVIL ACTION NO. 71-H-891

L. N. McDONALD and RAYMOND LAIRD,
Plaintiffs,

v.

THE SANTA FE TRAIL TRANSPORTATION CO.
and INTERNATIONAL BROTHERHOOD OF
TEAMSTERS LOCAL NO. 988,
Defendants.

James Bullock, Houston, Texas,
for plaintiffs.

Robert W. Alexander, McLeod, Alexander,
Powel & Apffel, Galveston, Texas, for
defendant The Santa Fe Trail Transportation Co.

James P. Wolf, Dixie, Wolf & Hall, Houston,
Texas, for defendant International
Brotherhood of Teamsters Local No. 988.

MODIFIED MEMORANDUM AND OPINION

On January 4, 1974, this Court issued a Memorandum in which it noted an unresolved question regarding the standing of Caucasians to bring suit under 42 U.S.C. § 1981. Subsequently, defendant Santa Fe Trail Transportation Company has brought to the Court's attention several cases on point most notably the following: *Van Hoomissen v. Xerox Corp.*, 368 F. Supp. 829 (N.D. Cal. 1973);

Ripp v. Dobbs Houses, Inc., 366 F. Supp. 205 (N.D. Ala. 1973). Upon full consideration of the pleadings and authorities cited, it is the opinion of the Court that the better reasoned authorities hold that § 1981 is inapplicable to white persons. *See Van Hoomissen, supra,* 368 F. Supp. at 838-840. Defendant Santa Fe Trail Transportation Company's Motion to Dismiss for lack of jurisdiction under § 1981 is granted.

With regard to plaintiffs' class action allegations, the Court has considered the entire record and particularly plaintiffs' allegations and concludes that the class of white persons who are employed or might be employed by The Santa Fe Trail Transportation Company in Houston, Texas, who are members or might become members of the Local 988, who have been discharged upon charges of misappropriating company property is not so numerous as to make joinder of all such members impracticable. Therefore, the Court concludes that this action may not be maintained as a class action. Fed. R. Civ. P. 23 (c)(1).

With regard to plaintiff Laird's allegations against defendant Local 988, it has been alleged by this defendant, and not denied by the plaintiff, that charges filed before the EEOC pertained only to the employer, defendant Santa Fe Trail Transportation Company. This Court has previously considered the requirement of exhaustion in Title VII cases with respect to uncharged unions and has concluded that the law requires such exhaustion as a jurisdictional prerequisite to any claim for damages. In limited cases where there is a "critical involvement of the collective bargaining agreement and its interpretation and application to plaintiffs' allegations", then joinder of a union under Fed. R. Civ. P. 20(a) is proper solely for

limited purposes pertaining to that "critical involvement" of the agreement. *See Held v. Missouri Pacific Railroad Co.*, ____ F. Supp. ____ (Civil Action No. 73-H-1053, S.D. Tex., filed April 3, 1974). The record in the present case indicates no proper basis for Title VII jurisdiction over defendant Local 988 and no critical involvement of the collective bargaining agreement. Therefore, this cause of action is dismissed as to defendant International Brotherhood of Teamsters Local No. 988 for want of jurisdiction.

With regard to defendant Santa Fe Trail Transportation Company's Motion to Dismiss for lack of Title VII jurisdiction, the present record is inadequate for determining whether or not plaintiffs complied with the 90-day jurisdictional requirements of 42 U.S.C. § 2000e-5(d). It is apparently agreed that the plaintiffs were charged with misappropriation on September 26, 1970, were discharged on October 2, 1970, and that charges were filed with the EEOC by plaintiff McDonald against defendant Santa Fe Trail Transportation Company and Local No. 988, on or about April 26, 1971, allegedly on behalf of both plaintiffs. Defendant Santa Fe alleges that a grievance filed by plaintiff McDonald with Local No. 988 on October 2, 1970, the same day as the discharge, reached a conclusion on October 29, 1970, more than 90 days before EEOC charges were filed. If this is true and the plaintiff McDonald had notice, then the Court is without Title VII jurisdiction. However, plaintiffs allege in their Second Amended Complaint that they notified in writing by Local Union 988 on April 3, 1971, that collective bargaining rights had terminated. It appears to the Court at this stage in the proceedings that the nature of notice given upon termination of grievance proceedings would govern

this Court's jurisdiction; that is a matter which would require an evidentiary hearing.

With regard to defendant Santa Fe's claims that the arbitration award is binding upon the Court, counsel's attention is again directed to this Court's opinion in *Held* wherein it was noted that the law provides that pursuing a remedy under the collective bargaining agreement does not necessarily bar subsequent relief under Title VII. However, if the issues were identical to those before the Court, if the evidence and hearing dealt adequately and fairly with all factual issues, and the arbitrator actually decided the factual issues also pending before the Court, the Court may defer to such award. See, e.g., *Rios v. Reynolds Metals Co.*, 467 F.2d 54 (5th Cir. 1972). The present record is inadequate at present for making such a determination in this case.

With regard to defendant Santa Fe's contentions as to plaintiff Laird, a supervisory employee not within the coverage of the collective bargaining agreement under which plaintiff McDonald processed a grievance, the Court is well aware that supervisory and non-supervisory employees are not treated identically under the Labor Management Relations Act, 29 U.S.C. § 141 *et seq*. However, as the Fifth Circuit Court of Appeals noted in *Rios, supra,* the interests protected by the LMRA and Title VII are not identical. No authority has been cited indicating that under the circumstances here present where plaintiffs Laird and McDonald were discharged for the same reason arising out of the same incident, the processing of a grievance by McDonald would toll the 90-day jurisdictional period only as to himself. In the absence of authority, the Court concludes for present purposes that jurisdiction over plaintiff Laird is identical to that of plaintiff McDonald.

Finally, the Court has reconsidered its Memorandum and Opinion of January 4, 1974, wherein it stated:

> Assuming, but not deciding, that the plaintiffs were discharged following their apprehension for the theft of their employer's property, this Court questions the validity of any challenge to a discharge properly brought. *See McDonnell Douglas Corp. v. Green,* 411 U.S. 792, 36 L.Ed.2d 688, 678, 93 S.Ct. 1817 (1973).

The pleadings of the plaintiffs do not allege that they were falsely charged with misappropriating company property; the substance of the allegations is that plaintiffs take issue with the fact that they were discharged for such conduct while a similarly charged Negro employee was not discharged. Upon reconsideration, the Court concludes that the dismissal of white employees charged with misappropriating company property while not dismissing a similarly charged Negro employee does not raise a claim upon which Title VII relief may be granted. For these reasons,

IT IS THE OPINION OF THIS COURT that this cause of action should be and hereby is dismissed with prejudice.

ENTERED at Houston, Texas, this 13th day of June, 1974.

/s/ CARL O. BUE, JR.
Carl O. Bue, Jr.
United States District Judge

IN THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CIVIL ACTION NO. 71-H-891

L. N. McDONALD and RAYMOND LAIRD,
Plaintiffs,

v.

THE SANTA FE TRAIL TRANSPORTATION CO.
and INTERNATIONAL BROTHERHOOD OF
TEAMSTERS LOCAL NO. 988,
Defendants.

(Filed June 13, 1974)

FINAL JUDGMENT

On May 2, 1974, this Court issued a Memorandum and Opinion and Final Judgment. By letter of May 15, 1974, counsel for Local No. 988 advised the Court that, contrary to appearances in the record, an EEOC charge had in fact been filed against Local No. 988. This Court is issuing this date a Modified Memorandum and Opinion making appropriate corrections. As correctly noted by counsel, these charges are primarily academic in light of the Court's holding. Therefore,

BE IT REMEMBERED that on this date the Court issued a Modified Memorandum and Opinion wherein it concluded that this cause of action should be dismissed for the reasons stated therein.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that this case should be and hereby is dismissed with prejudice.

This is a FINAL JUDGMENT.

The Clerk will enter this Judgment and provide counsel with true copies.

ENTERED at Houston, Texas, this 13th day of June, 1974.

/s/ CARL O. BUE, JR.
Carl O. Bue, Jr.
United States District Judge

L. N. McDONALD and Raymond Laird,
Plaintiffs-Appellants,

v.

The SANTA FE TRAIL TRANSPORTATION COMPANY et al., Defendants-Appellees.

NO. 74-2813.

United States Court of Appeals,
Fifth Circuit.

May 21, 1975.

Action was brought by discharged white employees claiming violation of their civil rights. The United States District Court for the Southern District of Texas, at Houston, Carl O. Bue, Jr., J., entered judgment against the discharged employees who appealed. The Court of Appeals held that statute giving all persons the same right to equal benefit of laws as is enjoyed by white persons confers no actionable rights upon white persons, and that discharge for misappropriation of company property, a charge not alleged to be false, while not dismissing similarly charged black employee did not provide a claim upon which relief could be granted under the equal employment opportunity provisions.

Affirmed.

* * *

James Bullock, Houston Tex., for plaintiffs-appellants.

Benjamin R. Powel, Robert W. Alexander, Galveston, Tex., for Santa Fe Trail Transp.

James P. Wolf, Houston, Tex., for Local 988.

Appeal from the United States District Court for the Southern District of Texas.

Before WISDOM, SIMPSON and RONEY, Circuit Judges.

PER CURIAM:

[1] 42 U.S.C.A. § 1981 gives all persons within the jurisdiction of the United States the same right to equal benefit of the laws "as is enjoyed by white citizens." The district court held that this section confers no actionable rights upon white persons, and dismissed for lack of jurisdiction the § 1981 claim brought by the two white plaintiffs. We affirm. Perkins v. Banster, 190 F. Supp. 98 (D.Md.), aff'd, 285 F.2d 426 (4th Cir. 1960); Kurylas v. U. S. Department of Agriculture, 373 F. Supp. 1072 (D.D.C. 1974); Van Hoomissen v. Xerox Corp., 368 F. Supp. 829 (N.D.Cal. 1973); Ripp v. Dobbs Houses, Inc., 366 F.Supp. 205 (N.D.Ala. 1973); *Contra,* WRMA Broadcasting Co. v. Hawthorne, 365 F. Supp. 577 (M.D. Ala. 1973); Gannon v. Action, 303 F. Supp. 1240 (E.D. Mo. 1969), aff'd in part, remanded in part on other grounds, 450 F.2d 1227 (8th Cir. 1971); Central Presbyterian Church v. Black Liberation Front, 303 F. Supp. 894 (E.D.Mo.1969).

[2] We likewise agree with the district court's conclusion that an employer's dismissal of white employees

charged with misappropriating company property while not dismissing a similarly charged black employee does not raise a claim upon which relief may be granted under Title VII, 42 U.S.C.A. § 2000e et seq. There is no allegation that the plaintiffs were falsely charged. Disciplinary action for offenses not constituting crimes is not involved in this case. See McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973). *Cf.* NLRB v. Fansteel Metallurgical Corp., 306 U.S. 240, 59 S.Ct. 490, 83 L.Ed. 627 (1939); Nix v. NLRB, 418 F.2d 1001, 1006 (5th Cir. 1969); AHI Machine Tool & Die, Inc. v. NLRB, 432 F.2d 190 (6th Cir. 1970).

Affirmed.